AIRLINE MERGER RELATED LABOR PROTECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

WHETHER THERE IS A NEED TO CODIFY CERTAIN AIRLINE MERGER RELATED LABOR PROTECTIVE PROVISIONS

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AIRLINE MERGER RELATED LABOR PROTECTION

FRIDAY, SEPTEMBER 24, 1982

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Aviation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 235, Russell Senate Office Building, Hon. Nancy Kassebaum (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: David M. Kirstein, staff counsel; and Charles M. Barclay, minority staff counsel.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator Kassebaum. The hearing will come to order. We are here this morning to examine whether there is a need for and the extent to which there should be special labor protection provisions which could be applied to a variety of intercarrier transactions involving mergers, sales, the transfer of control over all or a substantive portion of the carrier's property.

Between 1950 and 1979, the CAB [Civil Aeronautics Board] imposed a standard package of labor protective provisions on mergers and acquisitions involving work force consolidations. The package included a procedure for integrating the work force of the two carriers, dismissal allowances, displacement allowances, relocation benefits, and provisions requiring binding arbitration when the affected parties could not reach agreement.

In other types of transactions, such as route transfers, the CAB has sometimes imposed the payment provisions. Since 1979, the CAB has continued to impose the labor protective provisions to mergers at the request of the air carrier parties.

Before the subcommittee this morning is the basic question of whether, in view of airline deregulation, the Government should continue to play a significant role in determining the course of labor-management relations in various industry transactions. If it appears that some continued intervention is desirable, we must also consider then both the form and duration of any congressionally mandated labor provisions.

The industry and the unions have strong feelings about what is in their own best interest and in the overall public interest. I expect this hearing to aid the committee to more fully understand the reasons both for and against the continuation of these labor protective provisions.

Senator Goldwater?

Senator **Goldwater**. No opening statement, thank you.

Senator **Kassebaum**. Senator Packwood?

The **Chairman**. No, thank you, Madam Chairman.

Senator **Kassebaum**. Our first witness is the Honorable Dan McKinnon, Chairman of the Civil Aeronautics Board.

STATEMENT OF HON. DAN McKINNON, CHAIRMAN, CIVIL AERONAUTICS BOARD

Mr. **McKinnon**. Thank you, Chairman Kassebaum. I am delighted to be here with you to talk about LPP's [labor protective provisions] in the airline industry. Before I get started, I would like to acknowledge the presence of two members of our Board: our Vice Chairman, Betsy Bailey, and another member, Jim Smith.

As you know, there is a long history of LPP's in aviation regulation. Before I describe that historical context, let me share with you what in general are LPP's. They are labor conditions placed by the Government on an intercarrier agreement, merger or acquisition in a regulated industry, and in this case, the airlines. They provide certain benefits to airline employees.

In general, LPP's include the following: Seniority integration; supplemental pay to employees forced into lower paying jobs; dismissal allowances; retention of fringe benefits for dismissed employees; payment of moving expenses; payment to employees for costs in real estate transactions they incur by the change in control of the airlines; and binding arbitration of disputes between the airline and the employees about these provisions.

LPP's were originally developed for use in the railroad industry and adopted by the Board for application to the airlines. These two industries were subjected to LPP's because virtually all aspects of their corporate decisionmaking were controlled by the Government. Moreover, airlines, like railroads, are subject to the Railway Labor Act.

In the airline industry, LPP's were first imposed in 1950 in the United-Western acquisition case. Since that time, they have been imposed in approximately 50 cases.

It is important to know that from the first the Board has considered LPP's a matter of discretion. There are no specific statutory provisions that require LPP's. The Board has imposed them as part of the public interest review of transactions filed for Board approval.

A great many times the Board has accepted them as part of the merger or acquisition as proposed by the airlines involved. In these cases, they were not initiated by the Board, but instead by the airlines and approved by the Board.

There are two questions: In what types of cases have LPP's been imposed; and why were they imposed?

The answer to the first question is, they have been imposed in two types of cases. The first type of case is when a merger or acquisition is involved. Even in this category, which include almost all of the cases, no LPP's were imposed at all until 1950.

In addition, LPP's have been imposed only where there was at least one, and most usually two, certified air carriers that operate large aircraft. To put that in context, over the years there have been thousands of control relationship cases involving air taxis, commuter carriers, travel agents and others that have not included LPP's, or have had a blanket exemption from the act.

The next area in which LPP's were sometimes imposed has been route transfers or exchanges. Nearly all transfers have been approved without imposition of LPP's. They occur when airlines arrange to transfer some of their routes that have been assigned to them by the Board to other airlines. In such a case, the routes being transferred do not constitute control of the airline, as they would in a merger, but are a large enough part of the airline's assets to require approval by the Board.

The transfer is accomplished by sale, lease, or swap.

Where LPP's have been imposed in transfer cases, they have been somewhat different from those imposed in merger and acquisition cases. For example, they have not required seniority list integration.

In general, we found that only in truly extraordinary circumstances were LPP's imposed in route transfers. We have been unable to find any precise guidelines as to when the route transfer required the imposition of LPP's. We looked at percent and number of employees and at the nunber of points of the carrier's system that were involved. None of these factors showed much correlation between a particular route transfer or exchange and the imposition of LPP's.

The most troublesome question raised by this category of cases is whether the carrier receiving new authority owes an obligation to employees of the carrier losing the route. In general, the Board has been reluctant to impose such an obligation. At other times, the Board has imposed limited LPP's consisting of only a hiring priority requirement.

On a case by case basis, the Board has looked to see whether there will be a systemwide impact on the airline's employees. In some instances, the Board has also tended to look at the relative impact on employees, believing that the benefits of a transaction to shareholders should not be solely at the expense of employees.

There are other types of cases where LPP's have been considered in the past, but which have little relevance to air transportation today. In neither of these types of cases did the Board impose LPP's.

One type involved capacity reduction agreements. Under these agreements, airlines competing over a particular route or routes agreed to limit their schedules. The Airline Deregulation Act now prohibits such agreements in domestic markets.

Another type involved suspension and replacement agreements. Using these agreements, the Board permitted an airline to suspend service at a city only if another carrier, most likely a commuter, agreed to provide replacement service. Because of the enactment of the small communities air service program in section 419 of the act, these agreements are no longer needed.

Our research has disclosed no case of aircraft sales or leases in which the Board has imposed LPP's.

Attached to my testimony is a chart and a detailed summary, which I ask to be accepted for the record, showing all cases at the

Board since 1944 where LPP's were considered as part of the Board's decision. It shows the type of transaction, the type of authorization granted, and whether or not LPP's were imposed. Out of the 165 cases where LPP's were an issue, they were imposed in 50, or about one-third of the cases.

Also, at this time certain classes of carriers and their transactions are exempt from the need to obtain approval for their controlled transactions, and thus the basis for imposing LPP's. Those carriers include: Indirect air carriers, such as forwarders and charter operations; domestic cargo carriers; and air taxi operations, including commuters.

Exemptions have also been based on the amount of the airlines' assets that were involved. For example, the present exemption gives automatic approval without LPP's in all cases of aircraft acquisitions that involve no more than 20 percent of the number, value, or lift capacity of the seller's or lessor's fleet.

Once you find out where LPP's have been imposed, you want to find out why they were imposed, which is the critical issue for these hearings. Prior to passage of the Deregulation Act, the Board reasoned that labor strife should be avoided because labor-related disruptions would harm the stability and efficiency of the airlines involved and also would impair the operations of the regulated air transportation system as a whole.

Serious disruption would occur in the regulated systems because entry was tightly controlled, and other airlines could not readily replace shutdown services. While considering such factors as the number of employees, percent of work force, and the portion of the assets of the airline involved in the transaction, the decision about whether or not to impose LPP's was never based on those factors alone.

Labor protection has never been the Board's primary objective; rather, it has been a byproduct of other goals. This reasoning has enabled the Board to take into account all relevant factors to decide whether LPP's should be imposed.

All aspects of the case and its effects on the present air transportation system can be judged. The widespread impact on employees and the effect on the airlines involved are some, but not the only, factors used to make the determination of whether there would be a service disruption. They were not the rationale for the decision.

Another point that I must emphasize is that it is not the effect of possible labor disruption on the airlines involved in a transaction that is determinative. It is how the disruption of those airlines affects the overall air transportation system.

The Board's concern has not been the private contractual relations between company and employee, or the effect of these relations on the company and the employee. And the stability of the service of the individual airlines involved is only a means to an end.

For example, under domestic deregulation and a more open international policy, it is by no means clear that the shutdown of a particular airline means substantial disruption of the air service network, either here or abroad. Unlike the past, today other carriers can step in to replace service that has been lost. Domestically, they can do it without Board action. Internationally, the Board has acted quickly to fill voids as they occur, for example the Braniff failure.

What I have just described for you has been the Board's policy until domestic deregulation. Until that time the need for LPP's was presumed in merger and acquisition cases involving at least two large airlines. In other areas, such as route transfers, leases, aircraft sales, and sales of other assets, the Board seldom imposed LPP's.

The Deregulation Act, which was passed 4 years ago, put all of the industry on notice that change was occurring that would affect all aspects of the industry and its relationship to the Government. It undercut the presumption on which LPP's were based.

The Board in each merger case to come before it since deregulation has thus questioned the need for LPP's. We stated that in typical unregulated industries provisions such as these are bargained for between management and labor, not imposed by the Government. We further stated that information on the costs and benefits of LPP's in a deregulated, more competitive environment was lacking, and thus was needed.

Unfortunately, there has never been a chance to develop a record on the LPP issue in cases since deregulation. In every merger case since the Deregulation Act, all parties have agreed to imposition of LPP's and to their terms. They seem to have done so in order to avoid lengthy administrative proceedings.

The Board has yet to impose LPP's over the objection of any affected party since deregulation. In each case, the Board has accepted stipulations that the parties have not had time to provide for LPP's through the collective bargaining process.

Even before the Deregulation Act, the Board advocated collective bargaining as a preferred alternative to Board-imposed requirements. Perhaps collective bargaining would have been a little more effective in producing labor protection in mergers if the Board did not provide an alternative to bargaining.

Where does this brief history leave us, then? It leaves us looking at a regulatory solution developed in the 1930's for a problem that could arise in tightly controlled and different industry than today. It is a solution that is certainly not found in unregulated and competitive industries, and there has never been a thorough examination to determine its applicability to the airline industry of today.

Under deregulation, air transportation is a dynamic industry. It is an industry that was put on notice 4 years ago that its relationship with the Government was changing. Airlines and labor were notified 3 years ago that the Board's view of LPP's was changing.

The airline industry has gone through collective bargaining agreements during that period. It is operating now in a radically different atmosphere than when LPP's were developed and first applied.

The environment before the Deregulation Act cannot be resurrected and preserved. Before the Airline Deregulation Act, the Government was intimately involved in management decisions. Its purpose was to promote and protect the airline industry from the ups and downs of the competitive marketplace and insure a network of airline service, often by Government fiat. That is no longer the case.

Four years ago, when the Deregulation Act was passed, the airline industry had much the same structure that it had had for 40 years. Since that time, however, the industry has come a long way in adjusting to its new environment.

The Government is no longer the overseer of particular routes, particular carriers, or the means by which the carriers change their structure. Airlines easily may now enter new markets and may create innovative methods to prevent service disruptions. The threat to the air travel system from labor strife at one airline thus appears to be much less now than in the past.

Airline management must thus take into consideration the consequences of their decisions and the effect upon their work force, including whether their decisions add costs or risk disruptive labor strife.

The Deregulation Act has made this a call to be made by management, in consultation with labor, not by the Government. Only in unusual circumstances, where the greater public good is substantially affected, is the Government justified in intervening.

The final question on this issue is where do we go from here. It seems to the Board that there is a definite need for a detailed record to be built outlining very clearly the need for, and the potential results of, Government intrusion into the collective bargaining process. For that reason, we have made that issue part of the Eastern-Braniff route transfer case now before the Board.

Some of the questions that can be answered in that case and at this subcommittee hearings are:

To what extent the potential economic costs to the airlines of such provisions would discourage any attempts at restructuring their route systems or reaching conventional mergers;

What are the benefits to employees and how do these benefits encourage labor stability in the airline industry;

Whether there are conditions in the airline industry indicating that airline employees should be treated differently than those of other industries where Government does not have preapproval authority over industry control transactions;

Whether management and labor would be unable without Government intervention to negotiate private agreements to prevent labor strife that may cause disruption to the airline transportation system;

And what effect labor protective provisions would have on alternative means to prevent airline bankruptcies and permanent job losses. That last point is critical.

Deregulation has encouraged airlines and others in the industry not to look to the Government for solutions to their problems and not to rely on old solutions. The most recent example is the attempt by Braniff, Pan Am, and Eastern to arrange the sale of Braniff's Latin American routes. Each of these offers to Braniff were conditioned by stating that no labor protective conditions were to be imposed by the Government as part of the agreement. That is an issue the Board will have to decide. We hope to develop a good record in the case to help us, and the Congress, in this difficult area.

We have to be sensitive to the consequences of our actions. Injudicious imposition of LPP's may cause route abandonment and airline failure without the possibility of relief by takeover. The result may be service disruption to the public and jobs lost.

There may be other areas where some form of labor relief by Government is called for, for example where it is clear that collective bargaining will not work and there is no other means that can be used. The costs should be clearly known.

The key, I believe, is flexibility. This is what makes for a successful business.

Government has withdrawn largely from the regulation of the air transportation industry. It should not impose old inflexible solutions that may not meet the needs of today's air system. Inflexible intervention in this area could quickly reduce the flexibility that Congress has given in other areas.

If Congress believes that some legislation is necessary prior to a full examination of the consequences of imposing LPP's, only a simple short-term extension of the Board's domestic merger authority, the basis for imposing LPP's, should be enacted now. Such an extension would stop the transfer of that authority to the Department of Justice, as is directed under the Deregulation Act. It would clarify a difficult jurisdictional issue and avoid creation of a parallel merger approval structure in the short interval to CAB sunset.

This has been a necessarily short summary of the issue and its history. I hope that these highlights and the attachments to my testimony will be of help to the committee.

If you have any questions, I would be happy to try to answer them.

Senator KASSEBAUM. Thank you very much, Mr. McKinnon.

How long do you think it will take the Board to decide the Eastern-Braniff route transfer case?

Mr. MCKINNON. We hope we will have some decision maybe by the middle of next year, April of next year. That is not quite the middle of next year.

Senator KASSEBAUM. In the Texas International-Continental case, the Board, without success, attempted to gather evidence on the effects of LPP's. Now there may be—and I would be interested in your thoughts on why this was difficult, but why do you think the Board will have any greater success in the Eastern-Braniff case?

Mr. MCKINNON. Well, in the TI case, of course, the parties started out opposing LPP's. But they finally agreed to LPP's, it was my understanding, to try to pull the deal together quicker and not prolong it. So we thought that was going to be an opportunity for us to gather the facts.

So, far in the Eastern case with Pan Am and Braniff, all parties involved have decided they do not want to have labor protective conditions. Now, part of that case happened so fast, the interim approval of the Eastern-Braniff route tranfer, that everybody did not get a chance to get in their 2 cents' worth. Now, maybe in the extended case everybody will have a chance to share what their thinking is.

Generally, what is happening is that the employees with an airline that are going to be losing their jobs are all for labor protective provisions. Those with an airline that is going to obtain the ongoing functions are not very anxious to have labor protective provisions because they are concerned they are going to lose their jobs over it through the seniority integration.

Senator KASSEBAUM. As it stands now, the authority for imposing any of the LPP's or to study what type of LPP's should be imposed will go to the Department of Justice when the CAB phases out. Would you see any problems with it going, say, to the Department of Transportation?

Mr. MCKINNON. It is our view it would probably be best and more convenient to keep it where it is until the sunset does occur.

Senator KASSEBAUM. But I say with the sunset.

Mr. MCKINNON. After sunset?

Senator KASSEBAUM. Yes.

Mr. MCKINNON. It would probably be, in my judgment, better to give it to DOT. Now, I am not sure I am speaking on behalf of the whole Board, Senator.

Senator KASSEBAUM. Would the members of the Board be willing to work with the unions and the airlines in developing a transitional package to replace the Allegheny-Mohawk?

Mr. MCKINNON. We always stand ready to help everybody in this industry, Senator, in every way we can.

Senator KASSEBAUM. That certainly sounds like a reasonable position.

Senator Goldwater?

Senator GOLDWATER. Maybe this question has already been answered, but if the proposals that enter into the Allegheny case are accepted could this start a similar action between other takeovers? Let us think of the current Martin Marietta-Bendix-United Technologies, et cetera, problems they are having.

If we apply the desires of the Air Line Pilots Association to that case, would that mean that every time there would be a merger between companies or the failure of a company and a purchase of that company by another company, would we go through this same trauma that we are going through now?

Mr. MCKINNON. Well, sir, I guess it would depend—No. 1, let me state I am not a lawyer.

Senator GOLDWATER. Neither am I, thank God.

Mr. MCKINNON. My assumption would be it would depend what law applies to whatever Government agency may be involved in any of those mergers. And if there is no legislation, I would imagine they would have a hard time imposing them.

The one thing I learned, Senator, when I came to this town is I was an authority on everything before I arrived here. Now it is all I can do to just be an authority on one little area.

Senator GOLDWATER. We have an unusual situation here that one does not find to any extent in other industries, where seniority really means something. I am talking now about the flight crews, particularly. A pilot has built up years of seniority with a company and all of a sudden that company no longer has his routes, it has gone broke.

Should he be owed anything more than the person who is working for, let us say, X company, a manufacturing company that goes bankrupt or loses its business and closes its doors? I see in this the establishment of a precedent that could be rather extensive and to some extent damaging. Would you agree with that or not?

Mr. McKINNON. Yes, sir, I would agree with you.

Senator GOLDWATER. You say in you testimony, for example, under domestic deregulation and a more open international policy, it is by no means clear that the shutdown of a particular airline means substantial disruption in the air service network either here or abroad.

I am inclined to disagree with that to some extent, not completely. I cannot agree that the shutdown of any airline, even though the routes are taken by other airlines, does not upset.

I probably travel as much on airlines as any person in this country and I cannot say we have got as good airline service today as we had 1, 2, 3 years ago. There is a lot of flying, but it is awfully hard to get there from here. And I think the fact that some of our lines have in one case been forced out of business and in other cases forced to cut down their schedules because of the lack of money to buy new equipment or keep old equipment flying, which I think is related, has a particular impact on airline schedules.

I have great sympathy for the airline employee who has built up a long record of service. I do not know if I agree with the idea that we have to give them special compensation just because of that and just because of the fact that unfortunately they belong or they work for an airline that in plain language could not hack it.

Would you be inclined to agree?

Mr. McKINNON. Well, sir, if I could just share with you my thoughts for a moment. You talked about the transportation system today compared to 1, 2, or 3 years ago. When it was deregulated, one of the bottom line results was a better utilization of equipment.

Airlines today are better utilizing their employees and all of their assets. Now they cannot tack on labor costs or any other cost and come to the Civil Aeronautics Board and say we are entitled to make a certain profit and we need to pass along this rate increase because we have made these labor concessions or any other costs that they may have developed.

So, they have got to be more lean and more efficient. But the way the airlines do that makes it a little hard sometimes to get from here to there because they have gone to a hub and spoke kind of operation in cities around the country. Sometimes you have one-stop service where previously you may have had a nonstop service. But you are getting better utilization of the assets, and the end result is that for the lower costs you are going to get a lower ticket price.

Now, there is overcapacity as a result of the economy. Instead of having 50 percent capacity available on your planes you may be up in the 60's someplace. And as a result of overcapacity, the airlines are not making the kind of dollars they need to go out to McDonnell Douglas and Boeing to buy this new equipment that is much more fuel efficient to help them down the road.

So, it is much tougher in that area with our economy.

Senator GOLDWATER. I agree with that. But I am looking past this particular problem we call Allegheny, and I am looking at the future of airline transportation. And this has probably no great bearing upon this particular case, but I think the airlines need about $200 billion to buy equipment so that they can give this country the type of airline service I think they are entitled to. They need it so they are not faced with so many cancellations, and flight cancellations are becoming an accepted part of travel. That bothers me.

And what are we going to do as airlines are faced with the plain and simple fact that their equipment has built up so many hours on themselves that they no longer can be termed safe to fly? I do not say that airlines are unsafe to fly today, but many of our domestic carriers are over 30,000 hours in the air. The engines, thank God, seem to never give out, but the airframes begin to get old and get tired.

So, are we not faced with a continuation of the same problem as more and more airlines will find it more difficult to meet existing schedules? Will we not be coming back to this problem, which is a union-type problem, based upon those factors as much as based upon the present problem involving only one airline?

Mr. McKINNON. Well, sir, the problem with the airline schedule frequency, I do not think, has anything to do with the number of hours on the aircraft or any safety factors whatsoever along that line. I think the real benefits derived from purchasing new aircraft are derived from the greater fuel efficiencies, sometimes almost as much as 50 percent over current aircraft that are flying. And that is a method of cutting down operating costs.

In regards to your other thought, I think part of the deregulated environment now has caused people to look at the value of what air crews and what labor is all about. Some people are willing to work for less money than other people.

In a regulated environment, the unions come to management and put the screws to them, and all management had to do is come to CAB and say we have an increase in the cost, and so those labor costs would be passed right along. Today, that is not the case. An airline has to make it go and those who have the lower cost are going to be the most successful airlines.

So, there is a competitive pressure, to keep wages down. Now, you are getting into a judgment call· What is the value of an airline captain or a copilot or a flight crew member, or even other employees that work for the airline on the ground. if somebody is going to do the job and just as good a job for less money. This is one of the problems that is faced, as I see it, with the LPP's.

Senator GOLDWATER. Well, you are right there to some extent. But my argument, as I see it, is a longer range one, and I do not agree that the condition of the airframe and engines and so forth have no bearing. Many, many cancellations today are accompanied by the explanation, the aircraft is not serviceable, the aircraft needs service. And that did not used to happen.

I have not kept an accurate figure, but I daresay 10 percent of the flights I have been on in the last year have been either cancelled or their flight times moved up because the airplane had to be serviced. And that indicates to me that the time is coming when, if the airlines cannot put this money together, we are going to see mergers. My own personal guess is, maybe in *x* number of years there will only be five airlines in the United States.

What do we do then about accommodating the skills that have been accumulated in the cockpit, that can only be used in a cockpit? You cannot move a 40-year-old pilot or a 45-year-old, 50-year-old pilot into some other job quickly, like we can in other industries.

So, I see this problem as a continuing problem and one that I do not think we are going to solve in either way by what we do with this particular case. Those are just my own observations, and I have been at this business 55 years and it really bugs me. I do not like what I am looking at.

I have no other questions.

Senator KASSEBAUM. Senator Packwood.

The CHAIRMAN. I am curious. Do any of the managers in the airline industry have the equivalent of any gold parachute contracts, whereby if they lose their jobs by mergers or consolidations that they will be taken care of?

Mr. McKINNON. Senator, I am not aware of whether they do or do not, to be quite honest with you. I do not think in the Braniff case that they did. Some of their people have now gone out and sought other employment. I think Mr. Putnam—I understand he is going to be here today—might be an interesting person to ask that question of.

The CHAIRMAN. Do you think there is any disparity or unfairness if indeed management does provide for itself in the event of mergers, but that the bulk of the laboring people in the airlines are not covered?

Mr. McKINNON. Well, sir, as a businessman for 20 years before I came to this town, I have always felt that my talents were salable on some market someplace and I did not need any protection for my own personal benefit. I could go out and get another job.

The CHAIRMAN. So, it might be unfair. What we are seeing in other industries, frankly, on mergers, in addition to the airline industry, where management is making sure that it is taken care of in case—it is more often takeovers than it is deregulation.

But I would be curious as to whether you would think we have a tinge of unfairness if it were done in the airline industry for the purpose of protection because of deregulation, mergers, consolidations or otherwise.

Mr. McKINNON. Senator, I am not aware of it being done. I have read about it in other industries, but I am not aware of it in the airline industry at all.

The CHAIRMAN. But you think it would be unfair if it was done for the purposes of that protection?

Mr. McKINNON. Well, like I say, I think if you believe in yourself you ought to believe your skills are marketable someplace.

The CHAIRMAN. Let me ask some questions for Senator Cannon: It is my understanding that the Allegheny-Mohawk merger provisions have historically been imposed in all merger cases at the CAB. Further, I have been told that for the last decade these provisions have not been imposed by the Board, but rather the airlines have requested that these provisions be made a condition of the merger, and in only one instance have any monetary payments been made under these rules.

Therefore, how can these provisions possibly be the terrible burden that the airlines and others make them out to be?

Mr. McKinnon. He is correct that the airlines have volunteered to have them imposed, in essence, by the Board as part of the agreements. I think you will find when you ask the airlines they will be able to explain to you a little bit more some of their problems on the imposition, but there are costs. There is a variety of these other things that I mentioned in my talk that raise their costs. If they are required to have employees that make them inefficient, it is going to raise their cost of operations to such an extent that it might make them or could very well make them not competitive with other airlines serving the same route, which could eventually cause their demise.

So, it could lead to a point where a lot of airlines may not want to affect a merger for fear of destroying themselves in the process. And I think you are going to have some expert witnesses on that subject as the morning goes by.

The Chairman. A further question from Senator Cannon. He says:

If airlines have requested the imposition of these merger LPP's in order to expedite their cases before the CAB and avoiding a lengthy hearing on the topic, then is it fair to assume that as long as section 408 remains in the FAA Act airlines in most cases will continue to request or to accept these conditions on their mergers? And if so, why does it make any difference if we codify these protections?

Mr. McKinnon. That is a good question.

The Chairman. Well, Senator Cannon will be happy to know that you approve.

Mr. McKinnon. Well, we have been hoping at the CAB that we would get a case where they did not accept them, so we would have a chance to develop a record and find out all the facts on it, and then we would provide more information on that.

Now, also, under a deregulated environment, we have not had as many cases come down the line as yet as we had previously to deregulation. So, we think down the road here we will get some true test to find out just exactly where that is going.

The Chairman. Do you think there is anything generically different about the airline industry that should cause us to have a different attitude toward labor protection from other industries that were moving toward deregulation where we have statutorily provided for labor protection?

Mr. McKinnon. Well, I think when you passed the Deregulation Act here in the Congress you said: We are going to free this industry up to operate like any other competitive industry in this country. And I do not think you have very many competitive industries in this country where the Government is telling them how to handle their labor situation.

The Chairman. But what we have said in the past is we have taken industries that were regulated and started moving them toward deregulation. This is going to be an abrupt transition, and we are going to attempt to cushion. And the most extraordinary example was in the bill we passed in the telecommunication industry, which has been apparently mooted by the consent decree between AT&T and the Government.

But when we passed the bill here, we said to AT&T: Henceforth we are moving you into the unregulated area. You are going to have to make some changes in your organization. You may have to shift some employees back and forth. You may have some terminations.

And we set up a 5-year guarantee and in some cases 7 years under some circumstances for employees that might be affected as we moved that industry toward deregulation.

I am trying to think how in kind that is different from what we are doing with the airline industry.

Mr. McKinnon. Well, sir, one thing is perhaps a little different. When you passed the Deregulation Act 4 years ago, the Civil Aeronautics Board made it clear that these impositions were not going to be automatic, that we were going to review the cases. And the record shows that the situation is going to be different under deregulation than it was under regulation.

So, there has been a period here of 4 years where everybody has been on notice that the conditions are different. So, there has already been some notice. Now, not everybody has taken advantage of the notice, because we have had this jurisdictional obligation by law. But just the same, everybody was aware that things changed when you passed the Deregulation Act as far as the CAB is concerned.

So, I guess the bottom line is, there has been some notice, although it was not mandated directly by you.

[The material referred to follows:]

Appendix A

IMPOSITION OF LABOR PROTECTION PROVISIONS IN BOARD PROCEEDINGS

The Board's staff has reviewed its case files dating from 1938 to determine whether a standard Board policy exists with respect to the imposition of Labor Protective Provisions (L.P.P.'s) and the term of L.P.P.'s. The two primary areas where questions of L.P.P.'s have come up are in section 408 mergers and acquisitions and section 401 route transfer cases. As discussed in more detail below, however, we do not believe that the history of the Board's handling of L.P.P.'s to date provides standards which can or should be applied automatically at this time.

MERGERS AND ACQUISITIONS

Complusory labor protective provisions (L.P.P.'s) have generally been imposed in major section 408 cases. Their application has been far from universal. Indeed, no L.P.P.'s at all were imposed until 1950. *United-Western Acquisition of Air Carrier Property,* 11 CAB 701. Moreover, in all the cases in which L.P.P.'s have imposed[1] at least one and usually two certificated air carriers have been involved. On the other hand, since the Board's inception in 1938, there have been literally thousands of section 408 cases involving commuter air carriers, travel agents, common carriers and various aeronautical enterprises in which no L.P.P.'s were imposed. As a rule, these transactions have been routinely approved or exempted. In fact, a large number of them have been covered by blanket exemptions in the Board's Regulations.

As a result, L.P.P.'s have only been imposed sparingly. Historically, the Board has imposed L.P.P.'s reluctantly. In one case, the Board characterizes its imposition of L.P.P.'s as an extraordinary intervention . . . into the employer-employee relationships" (Order 78-6-108, *International Air Service Common Acquisition of Aloha.*) As a result, the Board had repeatedly refused to become farther entangled in carrier-employee labor disruptiosn because of its limited jurisdiction, lack of expertise and the availability of better equipped, more competent alternate forums. Moreover, in recent years, the primary reasons for the imposition of mandatory L.P.P.'s has been diminished. In the era prior to the enactment of the Airline Deregulation Act, the ability of carriers to enter and leave markets, as well as their pricing, was strictly controlled by the CAB. As a consequence, the Board saw a need to impose mandatory L.P.P.'s in major merger and acquisition cases in order to avoid labor strife that might threaten the stability of the national air transportation system. However, in the current climate the regulatory barriers to entry that used to pervade the airline industry have either been eliminated or lowered considerably. As a result, new carriers and existing carriers are now in a position where they can fill service voids that might result from labor disruptions.

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[1] Since 1950 L.P.P.'s have been imposed in approximately 42 section 408 cases.

While the Board hs recognized this fact in principal, it has not yet had the opportunity to fully examine the continuing need for L.P.P.'s in the context of litigated cases. The Board has also recognized that prior to the passage of the A.D.A. L.P.P.'s were routinely applied, at least where two certificated carriers were involved. The Board has accordingly continue to impose L.P.P.'s on the basis of stipulations by merging carriers, as well as employee groups, that there has not been adequate time since the passage of the A.D.A. to provide for employee protection in mergers through collective bargaining.

The Board's record in § 408 cases involving a single certificated carrier has been mixed. They were imposed in two such cases in the mid-1970's where they were requested by employee groups and accepted by the acquiring party. In contrast the Board rejected then when Hughes Tool Co. acquired Airwest, a local service carrier, and in an acquisition involving Aloha Airlines in 1978. To the extent that the purpose of L.P.P.'s is to prevent disruption of the air transport system, they should not be needed in single carrier 408 cases. The issues of intergrating two work forces doing the same jobs, which can lead to the labor unrest that the Board traditionally feared as a source of disruption, simply do not arise.

401 ROUTE TRANSFERS

Board practice in imposing L.P.P.'s in the context of route transfers short of full mergers has been even less consistent and less susceptible to definition. Where the Board has imposed L.P.P.'s, it has expressed concern over the potential harm to employees, and the equity of having carriers that benefit from the transfers bear some of the hardship. Nevertheless, it has also cast its decision in terms of avoiding labor unrest and service disruption because of widespread impact on affected carriers' work forces.

The Board has relied heavily on the latter concept when it has rejected L.P.P.'s in route transfer cases. In those cases the Board has emphasized that the public interest justification for L.P.P.'s is not employee welfare per se, but the need to avoid service disruption. This need has often been guaged by estimating the extent of potential employee hardship. Unfortunately, the Board has yet to develope reliable guidelines in the area. Thus, where 1000 employees were potentially affected, the threat to labor peace and service stability was sufficient to justify L.P.P.'s. (*Pan American-TWA Route Exchange.*) Where only 2½ percent of a carrier's workforce was affected, however, L.P.P.'s were not imposed. (*American-Pan American Route Exchange.*)

Another confusing aspect of L.P.P.'s in route cases is that they have on occasion been imposed in the absence of transfer agreements, i.e., where the Board has deleted or suspended a point from one carrier's certificate and added it to a second carrier's. The Board has in general followed the same theory it has used in route transfer cases, but again the results do not readily lend themselves to the development of fixed standards at this time. For example, in one case the Board found that the loss of 19 stations on two carriers' systems as a result of Board ordered route restructuring created a sufficient risk of disruption to justify L.P.P.'s. The loss of four stations from a third carrier's systems was not. (*Seven States Area Investigation,* 30 CAB 473 (1960)).

Another troublesome issue is whether the carrier receiving new authority owes an obligation to employees of the carrier losing points. In general, the Board has been reluctant to impose this obligation. This reluctance has sometimes caused the Board to refuse L.P.P.'s altogether. At other times it has caused the Board to impose very limited L.P.P.'s, specifically a hiring priority requirements. Here too, however, no clear cut criteria have evolved. One element in the Board's decision appears to be whether deletions are at the carrier's request or impsoed over the carrier's objection. Another criteria is the net effect of the deletion on the profits of the carriera is the net effect of the deletion on the profits of the carrier involved. For example in the *Seven States Area* case, the Board observed that the carrier which was not subjected to L.P.P.'s would lose profits as a result of the deletions. Profit impact is a factual question, however, which requires case-by-case examination.

OTHER BOARD ACTIONS

The issues of L.P.P.'s has come up in two other kinds of Board proceedings, neither of which has relevance to the air transportation system today. The first was capacity reduction agreements under which airlines competing over a particular route or routes agree to limit schedules. These agreements are prohibited outright under the A.D.A. for domestic markets. The second category involved suspension/replacement agreement under which the Board permitted a certificated carrier to suspend service at a city only if a commuter carrier had agreed to provide replacement service. With the amendments to section 401 and the enactment of the section 419 small community program, these agreements are largely a thing of the past.

The Board consistently declined to impose L.P.P.'s in either of these situations. In the case of capacity agreements, the Board concluded that employee disruption was caused by carrier management decisions, rather than Board actions. In the case of suspension replacement agreements, the Board found the potential magnitude of employee disruption was not large enough to threaten the air transportation system.

LABOR PROTECTIVE PROVISION LANGUAGE AND CONTENT

The Board first imposed labor protective provisions in *United States Acquisition of Air Carrier Property,* 11 C.A.B. 701 (1955). In that case and in the following *North Atlantic Route Transfer Case,* 12 C.A.B. 124 (1950), the Board adopted certain features of the so called Burlington Formula, developed by the Interstate Commerce Commission for railroad consolidations, with modifications considered appropriate. In the *Braniff-Mid-Continental Merger* case, 15 C.A.B. 708 (1952), the Board incorporated certain features of the Washington agreement of 1936, an agreement resulting from nationwide collective bargaining in the railroad industry, again with modifications considered appropriate. Also in 1952, in the *Delta-Chicago and Southern Merger* case, 16 C.A.B. 607, a few changes were made which were retained in subsequent cases. Finally, in terms of this initial stage of L.P.P.'s in the *Flying Tiger-Slicic Merger* case, 18 C.A.B. 320 (1950), a revision was made to clarify the Board's intention on one point.

For the next seven years, those L.P.P.'s were used without further change, although parties, according to their interests, requested modifications. The modifications were limited in number and routinely requested and rejected in successive cases. In the *United-Capitol Merger* case, 33 C.A.B. 307 (1961), however, the Board discussed at length specific modifications in the L.P.P. language used to date, and clarified, changed or inserted certain words in the provisions. As "modestly revised", this "standardized set" of L.P.P.'s (so characterized at 43 C.A.B. 165-166) was used for the next ten years.

In the *Allegheny-Mohawk Merger* case, 59 C.A.B. 19 (1972), the Board again discussed, at some length, certain language modifications, but changed only the arbitration section in terms, essentially to shorten and simplify the procedures. The "Allegheny-Mohawk provisions", as standardized L.P.P.'s are now called have been applied since 1972, and with only a few minor changes as expressly requested. Those changes have been made by the Board in the most recent mergers before it so as to be applicable to the particular cases. More specifically, in the *Continental-Western* case, Order 81-6-1,2, March 31, 1982, coverage of L.P.P.'s was extended to part time employees at the request of carriers and employee groups, with respect to that merger. In the *Texas International-Continental Acquisition* case, 81-10-66, August 14, 1981, coverage was modified at the request of the parties to apply explicitly to first level supervisors, but not to higher ranking personnel. In that case, the Board clarified the L.P.P.'s with respect to the corporate entities and affiliates that would be subject to them. However, the Board rejected requests to alter the burden of proof and change the method of collective bargaining.

In the Board's most recent merger case, which is still pending, the *Bergt-AIA-Wien-Western Acquisition* case, the parties on their own accord agreed to the definition of employee used in Order 81-10-66, supra. They also agreed explicitly that changes in employment caused by normal business adjustments of operations would not be covered by L.P.P.'s. The Board accepted these positions in an partial decision dealing only with L.P.P.'s in Order 82-4-109, April 20, 1982.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
81-8-152—Aug. 25, 1981.	San Diego Padres Air Travel, Inc.[1] et.al.	Certificated air charter carrier with air taxi, FBO.	408 stock acquisition	Exemption	No	No.
81-9-64—Sept. 11, 1981.	Charlotte Aircraft Corp., Intercontinental Airways, et. al.	Certificated cargo and charter carrier with aircraft dealer.	do	do	No	No.
81-7-74—July 15, 1981.	DHL Corp., Chiero's Consulting Services	Air freight forwarder, parent of cargo charter certificated air carrier with air cargo surface carrier.	do	do	No	No.
81-6-183	Eastern Air Lines,[1] Jetair	Certificated scheduled carrier with aircraft leasing firm.	do	do	No	No.
81-6-126—June 18, 1981.	Sun Pacific Airlines,[1] Travelogue et. al	Newly certificated scheduled carrier and travel agent, bus company.	408 formation of new carrier.	Approval	No	No.
81-6-112—Mar. 31, 1981.	Continental & Western merger case	Two certificated scheduled air carriers	408 merger	do	Yes	Carriers accepted and parties stipulated no time to make alternate arrangements thru collective bargaining.
81-3-178	Southern Air Transport,[1] Caribbean Air Services, et al.	Cargo and certificated charter carrier with cargo air carrier and air taxi.	408 stock acquisition	Exemption	No	No.
1-3-105—Mar. 20, 1981.	Air Florida System, Westgate	Parent of certificated scheduled carrier with another certificated carrier.	408 stock acquisition	Approval	Yes	In show cause order Board questioned need if two carriers kept separate. Board imposed because of unanimous support by parties, possibility of some integration and lack of time for alternatives. Board repeated unusual circumstances language.
81-2-96—Feb. 20, 1981.	Marco Island Airways,[1] Deltona	Certificated scheduled carrier with airport owner.	408 establishment of new carrier.	do	No	No.
81-2-52—Feb. 10, 1981.	Pan American World Airways,[1] South Pacific Island Airways.	Certificated scheduled carrier with air taxi and certificated applicant.	408 technical assistance agreement.	Exemption	No	No.
81-1-52—Jan. 9, 1981.	Swift Air Lines,[1] Golden Gate Airlines [1]	Dual certificated commuter air carrier with second dual authority carrier.	408 stock acquisition	do	No	No.
80-12-57—Dec. 11, 1980.	New York Air Lines,[1] Texas International Air Lines [1].	Certificated scheduled carrier with second certificated scheduled carrier.	408 establishment of new carrier.	Approval	No	No request for LPP's, but lengthy discussion of NYA as a ploy to escape TXI's labor contracts with union. Board found no public interest grounds for disapproval.
80-12-26—Dec. 5, 1980.	Kodiak-Western Alaska Air Lines,[1] Gifford Aviation.	Certificated scheduled carrier with air taxi.	408 stock acquisition	Exemption	No	No.

80-10-193—Oct. 31, 1980.	Mississippi Valley Airlines,¹ Butler Aviation et. al.	Certificated scheduled and commuter air carrier with person controlling fixed base operator.	......do	......do	No	No.
80-9-107—Sept. 19, 1980.	Great Northern Airlines,¹ Alaska International Air¹.	Scheduled certificated carrier with cargo and charter certificated carrier.	401 cargo authority transfer.	Approval	No—see order 80-8-183.	Originally treated under Board regulations part 291. Carriers had agreed to integration and arbitration. Labor not sole determination factor—no special circumstances alleged by labor justifies intervention. Furlough of pilots without prejudice to integration.
80-9-79—Sept. 15, 1980.	Pan American World Airways,¹ Orbis Polish Travel Bureau.	Certificated scheduled air carrier with travel agent.	408 stock acquisition	Exemption	No	No.
80-9-65—Aug. 12, 1980.	Republic Airlines,¹ Hughes Airwest¹	2 certificated scheduled airlines	......do	Approval	Yes	Board relief limited to standard LPP's. LPP's unusual intervention even pre-deregulation. Post ADA unusual circumstances only. In Republic's case, LPP's from prior merger and not enough time to provide for in collective bargaining.
80-8-22—Aug. 6, 1980.	Gulf & Western Industries,¹ Frontier Airlines.	Manufacturer and maintenance of aircraft with parent of certificated air carrier.	408 stock acquisition, limit 10 percent.	Exemption	No	No.
80-7-73—July 11, 1980.	Capitol International Airways,¹ Arrow Airways,¹ et. al.	Certificated scheduled carrier with charter carrier, aircraft dealer and maintenance.	408 stock acquisition, limit 52 percent.	......do	No	No.
80-7-20/21—May 14, 1980.	Tiger International (Seabord) World Airlines¹.	Certificated cargo carrier with parent of second.	408 stock acquisition and merger.	Approval	Yes	No.
80-5-63—May 8, 1980.	Flying Tiger,¹ Sun Valley Key Airlines	Parent of certificated cargo carrier with air taxi.	408 stock acquisition	Exemption	No	No.
80-3-94—Mar. 17, 1980.	Apollo Airways,¹ Golden Gate Airlines	Commuter with scheduled certificated air carrier.	401 certificated transfer with 408 asset purchase.	Exemption and 401 approval.	No	No.
80-2-73/76—Feb. 13, 14, 1980.	Golden West Airlines,¹ Monogram Industries et. al.	Scheduled certificated and commuter air carrier with aircraft parts manufacturer.	408 asset purchase with 401 certificated transfer.	......do	No	No.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
79-12-163, 164, 165—Dec. 24, 1979.	Pan American World Airways,[1] National Airlines,[1] Texas International[1].	Certificated scheduled air carrier (NA) with 1 of 2 others (TI or PA).	408 merger (PA) 408 stock acquisition (TI).	Approval (both)	Yes (both)	Inconsistent with deregulation no longer required to prevent disruption. In future not imposed routinely, or because of tradition. Must show special circumstances. Labor rely on collective bargaining in future.
9-1075—Oct. 12, 1979.	Oneida Cty. Aviation, d.b.a. Empire Airlines,[1] Oneida County.	Certificated scheduled carrier with airport operator.	408 lease of property. New carrier certification.	Approval	No	No.
79-10-16—Aug. 29, 1979.	DHL Airways [1] DHL Corp. et. al	Certificated scheduled carrier with freight forwarder and air taxi.	408 stock acquisition new carrier certification.	do	No	No.
79-7-128—July 19, 1979.	Aeronaves de Puerto Rico,[1] Boringuen Travel.	Certificated charter carrier with carrier travel agent.	do	Exemption	No	No.
79-7-79—July 12, 1979.	Eastern Airlines,[1] National Airlines [1]	2 certificated scheduled airlines	408 stock acquisition interim voting trust.	Approval	No	No.
79-7-55—July 10, 1979.	National Airlines,[1] Pan American Airlines,[1] Texas International Airlines [1].	NA with 1 of 2 other certificated scheduled carriers.	do	do	No	No
79-6-7/8—May 15, 1979.	North Central Airlines,[1] Southern Airways [1].	2 certificated schedule air carriers	408 merger	do	Yes	Applied in this case because policy not litigated. Longstanding policy given deference.
79-5-225—May 31, 1979.	Seaboard World Airlines,[1] Flying Tiger Line [1] et. al.	2 scheduled cargo carriers	408 stock acquisition, interim voting trust.	do	No	No.
9-4-85—Apr. 12, 1979.	Air California [1] & Westgate Pacific Southwest Airlines,[1] PSA, Inc. et. al.	2 scheduled certificated air carriers and their respective corporate parents.	408 stock acquisition newly certificated carriers.	do	No	No.
8-12-105—Dec. 14, 1978.	Trans Carib Air,[1] O. Roy Chalk International.	Certificated scheduled air carrier with travel agent.	408 stock acquisition new carrier certification.	do	No	No.
8-11-128—Nov. 28, 1978.	Mackey International, Inc.,[1] Charter Air Center.	Certificated scheduled air carrier with commuter.	Management agreement with loan—408.	Exemption	No	No.
8-8-203—Aug. 31, 1978.	Midway (Southwest) Airlines,[1] Southwest Airlines.	Certificated scheduled air carrier with intrastate carrier.	408 stock acquisition new carrier certification.	Approval	No	No.
8-8-85	McColluch International, Inc.,[1] Innomotivator.	Charter carrier with any person	408 stock acquisition	do	No	No.
8-7-107	Rich International Airways,[1] Ms. Jean Rich.	Scheduled cargo air carrier	408 equipment lease	Exemption	No	No.

8-6-208—June 30, 1978.	Aloha Airlines,[1] International Air Service Co.	Scheduled certificated air carrier with aircraft lessor, sales, maintenance.	408 stock acquisition 65 percent limit.	Approval	No	LPP's extraordinary remedy fact that unlikely to be used and hence costless not grounds. Mixed precedent single carrier acquisition. Done where acquirer accepted. Decline adopt policy of routine imposition.
78-6-34	Britt Airlines, Britt Aviation et. al.	Commuter carrier with air taxi	408 stock acquisition	Exemption	No	No.
78-3-119	Airline Tariff Publishers, Inc. various certificated air carriers.	Scheduled certificated air carriers with tariff publisher.	412 agreement	Approval	No	No.
78-3-66	Piedmont Aviation,[1] Baldwin Aviation	Scheduled certificated air carrier with fixed base operator.	408 asset purchase	do	No	No.
77-11-42—July 10, 1977.	Trans World Airlines, Trans International Airlines,[1] et. al.	Various certificated scheduled and charter carriers with tour operators.	408 stock acquisition	do	No	No.
77-3-88/89	Modern Air Transport,[1] Eugene Horbach, et. al.	Certificated charter carrier any person	do	do	Yes	Standard practice in acquisition as well as merger, including supplemental air carriers. Purchaser willing to accept.
77-3-81—Mar. 15, 1977.	Continental Airlines,[1] Continental Aircraft Services, Inc.	Certificated scheduled air carrier with aircraft leasing.	do	do	No	No.
77-2-124—Feb. 25, 1977.	Flying Tiger Line,[1] Tiger International et. al.	Certificated air cargo carrier with corporate reorganization.	408 corporation reorganization.	do	No	No.
75-5-62—May 16, 1975.	Modern Air Transport,[1] Aeroamerica	Certificated charter carrier with unclassed aeronautical enterprise.	Management assistance agreement.	do	No	No.
75-2-100	Pan American World Airways,[1] Air Carrier Supply.	Certificated scheduled air carrier with aircraft parts dealer.	408 stock acquisition	do	No	No.
75-1-23	Braniff International Airways,[1] Guardian Maintenance et. al.	Certificated scheduled air carrier with airport security screening company.	408 corporation reorganization.	do	No	No.
74-11-146—Nov. 27, 1974.	Flying Tiger Line,[1] Transmeridian Air Cargo.	Certificated cargo carrier with foreign air carrier.	408 acquisition of control through equipment lease.	do	No	No.
74-11-10	Overseas National Airways,[1] Logistical Services, Inc.	Certificated charter carrier with air cargo ground handler.	408 change of operations	do	No	No.
74-7-97—July 22, 1974.	Hughes Airwest,[1] Lineas Aereas de Nicaragua.	Certificated scheduled carrier with foreign air carrier.	408 stock acquisition with equipment sale; management ;assistance agreement.	do	No	No.
74-6-17—June 4, 1974.	Hughes Airwest,[1] Liberia National Airlines.	Certificated scheduled air carrier with foreign airline.	408 technical assistance agreement, 412 agreement.	412 approval, 408 exemption.	No	No.
6-12-118—Dec. 21, 1976.	Chicago Helicopter Airways, International Metals and Machines, et. al.	Certificated helicopter carrier with railroad.	408 stock acquisition	Approval	No	No.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
6-9-165—Sept. 30, 1976.	Air Midwest,[1] AB Leasing et. al	Certificated scheduled air carrier with aircraft lessor.	408 aircraft lease	Exemption	No	No.
6-3-126/127	Trans International Airlines,[1] Saturn Airways [1].	2 certificated charter carriers	408 merger	Approval	Yes	Long established policy to mitigate labor strife and consequent disruptions to air transport system.
6-1-121—Jan. 30, 1976.	Braniff Airways,[1] Flying Tiger Line,[1] United Airlines,[1] et. al.	Various certificated air carriers and their respective created holding companies.	408 stock acquisition	Conditions imposed	No	No.
5-10-23/24—Sept. 26, 1975.	Johnson Flying Service,[1] Evergreen Helicopters.	Certificated charter carrier with air taxi	408 merger, asset purchase 401 certificated transfer.	Approval	Yes	Evergreen willing to accept standard provisions, no special circumstances for increased protection.
75-8-117—Aug. 21, 1975.	Munz Northern Airlines, William S. Munz[1].	Scheduled certificated air carrier with air taxi.	408 purchase of assets including unused certification.	do	No	No.
75-8-150—July 31, 1975.	McCulloch International Airlines,[1] FGH Financial Corp.	Certificated charter air carrier with any person.	408 stock acquisition	do	No	None requested, employees not affected. No present need. Board retains inherent jurisdiction.
74-2-102—Feb. 25, 1972.	Alaska Airlines,[1] Alaska Continental Development Corp.	Certificated scheduled carrier with any person.	408 corporate reorganization.	do	No	No.
73-8-105—Aug. 21, 1973.	Southern Airways,[1] SOADO Venture	Certificated scheduled air carrier with aeronautical enterprise.	408 stock acquisition	do	No	No.
73-5-120—May 25, 1973.	Chicago Helicopter Airways,[1] Merchantile Bank of Chicago, et. al.	Certificated helicopter carrier with aeronautical enterprise, railroads.	408 stock acquisition	do	No	No.
73-4-120—Apr. 27, 1973.	Airline Tariff Publishers, et. al	Various certificated air carriers with tariff publishers.	408 acquisition, 412 agreement.	do	No	No.
73-4-80—Apr. 11, 23.	Eastern Airlines,[1] Caribbean Atlantic Airlines [1].	2 certificated scheduled airlines	408 asset purchase, 401 certificate transfer.	do	Yes	No.
73-4-72—Apr. 17, 1972.	Allegheny Airlines,[1] Veroca Air Service	Certificated scheduled carrier with commuter.	408 replacement service agreement, 412.	408 exemption, 412 approval.	No	No.
73-1-12—Jan. 4, 1973.	Alaska Airlines,[1] Alaska Continental Development Corp.	Certificated air carrier with any person	408 stock acquisition	Approval	No	No.
72-11-74—Nov. 17, 1974.	Eastern Airlines,[1] Caribbean Atlantic Airlines [1].	2 certificated scheduled air carriers	408 management and financial assistance agreement.	do	No	No.
72-11-71—Nov. 16, 1972.	Kodiak Airways,[1] Western Alaska Airlines [1].	2 certificated scheduled airlines	408 merger	do	Yes	No.

72-4-86	Texas International Airlines,[1] Jet Capital.	Certificated scheduled airline with any person.	408 stock acquisition	do	No	No.
72-8-10	Pan American World Airways,[1] Falcon Jet Corp.	Certificated scheduled carrier with aircraft dealer.	408 joint venture	do	No	No.
72-5-73/74—Apr. 24, 1972.	Delta Airlines,[1] Northeast Airlines [1]	2 certificated scheduled carriers	408 merger 401 certificate transfer.	do	Yes	No.
72-4-31/32—Apr. 23, 1972.	Allegheny Airlines,[1] Mowhawk Airlines [1].	2 certificated scheduled carriers	do	do	Yes	Board has a long established policy of conditioning air carrier mergers.
71-6-78—June 15, 1971.	Delta Airlines,[1] Northeast Airlines [1]	2 certificated air carriers	408 financial assistance agreement.	Exemption	No	No.
71-6-145—June 29, 1971.	Eastern Airlines,[1] Caribbean Atlantic Airlines [1].	2 certificated scheduled air carriers	408 technical assistance agreement.	Approval	No	No.
72-2-52—Feb. 14, 1972.	Wright Airlines,[1] TAG Airlines [1]	2 certificated scheduled air carriers	New 401 certificate issued, old revoked.	408 dismissed	No	No.
55 CAB 915 (1970)	Allegheny Airlines,[1] Henson Aviation	Certificated scheduled carrier with commuter.	408 suspension replacement, 412.	408 exemption, 412 approval.	No	No.
55 CAB 747 (1970)	Northwest Airlines,[1] Northeast Airlines [1].	2 certificated scheduled air carriers	408 merger	Approval	Yes	LPP's adequate protect work force. Based on equitable principle that carriers benefiting from merger should bear cost of hardship to employees. No need for specific plan or advance negotiations.
55 CAB 684 (1970)	American Airlines,[1] Trans Caribbean Airlines[1].	do	do	do	Yes	Impose tho many TCA employees benefit from merger. American willing to accept.
55 CAB 684 (1970)	Trans International Airlines,[1] Lyon Van & Storage Co.	Certificated charter carrier with motor common carrier.	408 stock acquisition	do	No	No.
64 CAB 794 (1970)	Trans World Airlines,[1] San Francisco-Oakland Helicopters [1].	Certificated scheduled air carrier with certificated helicopter carrier.	408 stock acquisition and financial assistance.	do	No	No.
54 CAB 699 (1970)	Flying Tiger Line,[1] Tiger International	Certificated cargo carrier with any person.	408 corporation reorganization.	do	No	Applied to protect employees from large scale disruptions occassioned by any or rate changes such as major suspension or acquisitions or mergers. No such risk here.
54 CAB 468 (1970)	American Airlines,[1] Trans Caribbean Airways.	2 certificated scheduled air carriers	408 financial assistance; 412.	412 approval, 408 exemption.	No	No.
53 CAB 575 (1970)	Ozark Airlines,[1] Lester E. Cox Medical Center.	Certificated scheduled air carrier with any person	408 stock acquisition	Approval	No	No.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
53 CAB 39 (1969)	Hughes Airwest,[1] Hughes Tool Co.	Certificated scheduled air with aeronautical enterprise acquisition.	do	do	No	See 54 CAB 699 above. Even if Hughes management moves employees around, LPP's to protect from burden Board action, not management decision.
52 CAB 958 (1969)	Overseas National Airways,[1] Green Line.	Certificated charter air carrier woth surface common carrier.	do	Exemption	No	No.
52 CAB 620 (1969)	Pan American World Airways,[1] New York Airways [1].	Certificated scheduled air carrier with certificated helicopter carrier.	408 stock acquisition, 412 agreement.	412 approval, 408 and 412.	No	No.
50 CAB 882 (1969)	Trans World Airlines,[1] British West Indian Airways.	Certificated scheduled air carrier with foreign air carrier.	408 technical assistance agreement, 412.	408 exemption, 412 approval.	No	No.
49 CAB 903 (1968)	Trans Texas Airways,[1] Texas Int'l Airlines.	2 certificated scheduled air carriers	401 corporation reorganization approval and certificate transfer.	Approval	No	No.
49 CAB 60 (1968)	Braniff International Airlines,[1] LTV Corp.	Certificated scheduled air carrier with aeronautical manufacturer.	498 corporation reorganization.	do	No	No.
49 CAB 36 (1968)	Saturn Airways,[1] ADXICO Sales	Certificated air carrier with aircraft parts dealer.	408 stock acquisition	do	No	No.
E-26967—6-24-68	Allegheny [1]-Lake,[1] Central [1] merger	Certificated direct air carriers,	401, 498	do	Yes	Yes. Refused request for modification.
E-26810—5-20-68	Airlift-Slick route transfer	All cargo carriers	408	do	Yes	Do.
E-26625—4-9-68	Bonanza [1]-Pacific,[1] West Coast [1] merger.	Certificated direct air carriers.	401, 498	do	Yes	No.
E-26548—3-21-68	Alaska [1]-Alaska Coastal,[1] merger	do	401, 498	do	Yes	No.
E-26349—2-14-68	Northern Consolidated [1]-Wien Alaska, merger.	do	401, 498	do	Yes	No.
E-26083—12-6-67; E-26241-16-68.	Alaska-Codova, merger	do	401, 498	do	Yes	No.
E-25626—9-1-67	Frontier-Central, merger	do	401, 498	do	Yes	Board adopted I.D.
E-25240—June 2, 1967.	Western-Pacific Northern merger	Certificated direct air carriers	401, 498	do	Yes	No.
E-24427/28—Nov. 22, 1966.	Eastern-Mackey merger	do	401, 498	do	Yes	No.
E-24297—October 19, 1966.	Pangra acquisition	do	412, 408	do	Yes	No.
E-22680—Jan. 21, 1965.	Saturn-AAXICO merger	Cargo carrier	408	do	Yes	No.

70 CAB—July 25, 1963.	South Pacific-Pan Am route transfer	Certificated direct air carriers	408	do	Yes	Yes—applicability to unorganized employees. Held: Yes.
38 CAB—1153 (1963).	American-Eastern merger	do	408	Withdrawn by parties.	Yes	Do.
38 CAB—796 (1963)	Wien Alaska-Pan Am route transfer	do	401	Approval	Yes	Yes—additional protection for pilot groups denied.
36—CAB—139 (1962).	Zantop Air Transport—coastal certificate transfer.	Supplemental, part 43 noncommon carrier air carriers.	401, 408	do	No	No.
36 CAB—112 (1962)	Alaska Coastal—Ellis	Certificated Alaskan carriers	408, 401	do	Yes	No.
33 CAB—307 (1961)	United Capital merger	Certificated direct air carriers	408, 401	do	Yes	Yes. LPP's will be changed only where required by experience indicating need for change or by particular factual circumstances. Applicability to unorganized employees. Calculations of displacement allowances. Fringe benefits. Lump sum separation allowances. Sales of residences. Advance notice of proposed changes in employment. Coverage of officers and directors. Causation. Alternate employment. Effective date.
31 CAB—965 (1956)	California-Eastern certificate of transfer	Supplemental air carriers	401, 408	do	No	No.
25 CAB—186 (1957)	North Central-Lake Central acquisition	Certificated direct air carriers	401, 408	Disapproved	No	Do.
24 CAB—51 (1956)	Mackey-Midet acquisition	do	401, 408	Approval	Yes	Yes. Mandatory LPP's imposed despite voluntary agreement.
23 CAB—500 (1956)	Colonial-Eastern acquisition	do	401, 408	do	Yes	Yes. Request for rebuttable presumption that claim caused by transaction denied. Also denied request for modifications of term, dismissal allowances, supplemental benefits and furlough allowances. Will not change provisions unless there are indications that existing provisions are inequitable or have adversely affected employees.
23 CAB—428 (1956)	Wien Alaska acquisition of Byers (route transfer).	do	401, 408, 412	do	Yes	No.
23 CAB—979 (1955)	Christensen and Cordova, transfer of certificates.	do	401, 408	do	No	No.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
20 CAB—323 (1955)	Continental-Pioneer acquisition case	do	408	do	Yes	Yes. Request to modify and expand LPP's denied. Term. Moving expenses dismissal allowances.
18 CAB—453 (1954)	Eastern-Colonial/National-Colonial acquisition.	do	408	Disapproved	No	No.
18 CAB—326 (1954)	Flying Tiger-Slick merger	do	401, 408	Approval	Yes	Yes. Denied request for modification of dismissal allowances, moving expenses, claims for losses in sale of homes, and displacement allowances. Clarified language on fringe benefits. Refused to modify view that seniority questions should be negotiated.
16 CAB—647 (1952)	Delta-Chicago and Southern merger	do	401, 408	do	do	Yes. Coverage. Integration of seniority lists. Displacement and dismissal allowances. Computation of allowances. Change of residence. Traveling and moving expenses.
15 CAB—971 (1952)	West Coast-Empire merger	do	401, 408	do	Yes	Yes. Board rejected ALJ's proposal to retain jurisdiction rather than impose mandatory conditions.
15 CAB—708 (1952)	Braniff-Mid Continent merger		401, 408	do	Yes	Yes. Integration of seniority lists. Displacement allowances. Dismissal allowances. Traveling and moving expenses. Real estate losses.
12 CAB—124 (1950)	North Atlantic-route exchange	do	408, 801	do	Yes	Although impact hard to predict, impose just in case. Since Pan Am agreed to take all employees, include as condition.
11 CAB—246 (1950)	Arizona-Monarch merger		408, 401		No	No.
11 CAB—33 (1949)	Monarch-Challenger merger	do	408, 401	do	No	Yes. ALPA asserts that Board withhold approval until seniority issues resolved. Board said this is a matter for private negotiations.

11 CAB—701 (1950)	United-Western acquisition of air carrier property.	do	Route equipment transfer, 408, 412.	do	Yes	After orginally imposing no provisions Board imposed LPP's after transfer when inquiry to Western pilots has occurred. Board has discretion, to impose * * * is not.
8 CAB—110 (1947)	Northern Consolidated et al. consolidation.	do	401,408	do	No	No.
7 CAB—769 (1947)	Wien Alaska-Ferguson	do	401, 408, 412, 801	do	No	No.
7 CAB—365 (1946)	American-Mid Continent acquisition	do	408	Disapproved	No	No.
6 CAB—671 (1946)	National-Caribbean-Atlantic control	do	408, 412	do	No	No.
6 CAB—671 (1945)	American-American Export control	do	408	do	do	Yes. Collective bargaining of seniority list.
4 CAB—708 (1944)	Alaska-Cordova acquisition	do	401, 408	do	Yes	No.
4 CAB—680 (1944)	Northeast-Mayflower acquisition	do	408, 401	Approval	No	No.
4 CAB—654 (1944)	Western-Inland acquisition	do	401, 408	do	No	No.
3 CAB—522 (1942)	Alaska Air Lines et. al.	do	408	Disapproved	No	No.
3 CAB—315 (1941)	Marine Airways, Alaska Air Transport consolidation.	do	408	Approval	No	No.
3 CAB—207 (1941)	Wien Alaska-Miron acquisition	do	408	do	No	No.
2 CAB—1,409 (1940)	TWA-Marquette acquisition	do	408, 412	do	No	No.
1 CAB—739 (1940)	United-Western acquisition	do	408	Disapproved	No	No.
34 CAB—274 (1961)	Eastern Air Lines, Mohawk Airlines	2 certificated schedule air lines	401 certificated transfer	Approval	No	No evidence material dislocation ground basin, nominal flight times, carrier suffer loss. No evidentiary showing.
72-11-139—Nov. 30, 1972.	Universal Airlines, Saturn Airways	do	Bankruptcy	Enforcement complaint dismissed.	No	The carrier using Universal planes to fly Universal contracts. No Board action required no grounds for LPP's.
75-1-133—Jan. 30, 1975.	Pan American World Airways, Trans World Airlines.	do	401 suspension, exemption; 412 agreement.	412 approval, 416 exemption.	No	Record inadequate for informed decision. Direct written supplements.
75-4-4—Apr. 1, 1975.	Pan American World Airways, Trans World Airways.	(See above)	(See above)		Yes	Purpose of LPP not general employee welfare, but stability, no industrial strife. Employee impact so great as to jeopardize stability, efficiency of ongoing relationship. Up to 1,000 employees affected. Cost to them can be great without terminations. Full LPP's required.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
81-8-72—Aug. 13, 1981.	Alaska International Air, Great Northern Airlines.	Cargo carrier with certificated air carrier.	408 merger (request for post merger LPP's).	Exemption (request denied).	No	Original authorization not conditioned on acceptance of arbitration provision. Can't compel arbitration. Only carrier bound to participate anyway.
77-8-126—Aug. 25, 1977.	Pan American World Airways, American Airlines.	2 scheduled certificated air carriers	401 route exchange (request for post transaction LPP's).	(Request denied)	No	Fact that 60 pilots may have been furloughed not decisive. No right of all employees. Effect must be so widespread as to risk continued stability of carrier. 2½ percent of personnel not widespread, system wide. Pan Am, TWA distinguished. Many more employees. Risk labor unrest frustrate exchange. Board found necessary for carrier's survival.
80-12-15—Dec. 5, 1980.	Pan American World Airways, Air Florida.	do	401 certificate amendments.	Approval	No	Board aporeciates incumbents concern for ground employees in Costa Rica, but not grounds for Board intervention.
30 CAB—473 (1960)	Braniff Airways, United Airlines, Western Air Lines.	3 certificated scheduled air carriers	401 certificate deletions		Yes as to Braniff and Western. No as to United.	With Western and Braniff, deletions total 19 points been without firings, relocations cause sufficient. Merger or route exchange not required. Carriers will benefit by deletions, LPP burden small in comparison. United-only 4 points, no major disruption, it loses on deletions as is.
31 CAB—63 (1960)	Trans World Airlines, Lake Central Airlines.	2 certificated scheduled air carriers	401 certificate deletions with 401 certificate amendments.		No	Argument that TWA losing one segment without gaining another means flight time inevitably reduced not sufficient.
33 CAB—1044 (1961).	Riddle Airlines,[1] Aeronvias Sud Americana.	Certificated cargo carrier with foreign air carrier.	Aircraft lease, interchange; 408, 412.	408 exemption 416 approval (interim).	No	Not appropriate for interim agreements pending decision on merger applications.
36 CAB—176 (1962)	Pan American World Airways, Braniff Airways.	2 certificated scheduled air carriers	Equipment interchange 408	Approval	No	No showing adverse effect on employees possible benefits, retention of jurisdiction sufficient.

38 CAB—796 (1963)	Pan American World Airways, Wien Alaska Airlines.	do	401(h) route transfer	do	Yes	No.
40 CAB—339 (1964)	Pan American World Airways, Delta Air Lines.	do	Equipment interchange	do	No	No showing harm employees general retention of jurisdiction sufficient.
40 CAB—489 (1965)	Pacific Northern, Pan American World Airways.	2 certificated scheduled air carrier	401 suspensions, and additions.	do	No	Pilots request LPP's imposed on Pac. N. for displaced Pan Am personnel. No precedent for imposing on 1 carrier for benefit of employees from 2d following involuntary suspension.
71-8-91—Aug. 19, 1971.	Trans World Airlines, et al.	Various certificated scheduled air carriers.	412	Approval	No	In essence capacity agreements merely accelerate adjustment of excess capacity to demand. LPP's never intended for this purpose. Burden on carriers frustrate process.
73-1-12—Jan. 2, 1973.	Northeast Airlines, Inc., et. al	do	401 suspension commuter replacement.	Approval, exemption.	No	No factual showing hardship required by 30 CAB 473. Ample opportunity in regional route case.
73-3-60—Feb. 14, 1960.	Trans World Airlines, Inc., et al	do	412 capacity agreements	Requests for comments.	No	Evidence not show capacity agreements work hardship on employees policy for LPP's not general employee welfare, but maintaining interstate commerce by avoiding labor strife.
74-11-91—Nov. 19, 1974.	Alaska Service Investigation	2 scheduled certificated air carriers	401 suspensions	do	Yes	Not full LPP's but a hiring priority provision. Board imposed to alleviate dislocation. Cites 71-12-45.
75-6-152—Apr. 18, 1975.	American Airlines,[1] Pan American World Airways.	do	401 route exchange	Approval	Yes	Not full LPP's but 1 year hiring priority. No Board expertise on labor in general. Imposed only with system disruptions. None here cites 71-12-45.
72 CAB—527 (1977)	Chicago-New Orleans route proceeding	Various scheduled certificated air carriers.	401 deletion	do	No	No (ALJ's rejection of labor protection not appealed to Board).
75 CAB—207 (1977)	Eastern Air Lines, Piedmont Aviation	2 scheduled certificated air carriers	401 route exchange	do	No	Do.
80-7-172—Feb. 28, 1980.	Capitol International Airways, Arrow Airways.	Scheduled certificated air carrier with certificated charter carrier.	408 stock acquisition	Exemption	No	LPP's unusual intervention. Since Arrow non-operating, no disruptive integration issues needing Board attention.
81-5-151—May 27, 1981.	Continental Air Lines, Texas International Airlines.	2 scheduled certificated air carriers	do	do	Yes	With reversal of TI opposition, like Continental Western II where parties stipulate insufficient time for collective bargaining.

Order and date	Names of parties	Type of 408 enterprises	Type of transaction	Type of authorization	LPP's imposed	LPP's discussed
81-10-66—Aug. 14, 1981.	Continental, Western	do	do	do	Yes	In deregulation, LPP's represent farthest Board should go provide adequate support for labor under 5.102.
82-1-148—Jan. 29, 1982.	Air Florida,[1] Western Air Lines, et. al	do	do	Approval	Yes	Section 102 not require disapprove solely on labor grounds. Standards LPP's sufficient.

[1] Denotes certificated air carrier.

The CHAIRMAN. Thank you.

Madam Chairman, I have got to leave and go to Finance. A meeting has been called on a markup, and one of the bills relates to some of the telecommunications industry and its financial health, and I did not know it was coming up today, but I am going to have to go to that meeting now.

Senator KASSEBAUM. Thank you very much for coming.

Thank you, Chairman McKinnon.

The next witness group won the toss of a coin, so it will appear next: Paul Ignatius, representing the ATA, and also accompanied by Mr. Howard Putnam, president and chairman of the board, Braniff, and Mr. Ed Meyer, president and chief executive officer of TWA, and Mr. William Howard, president and chief operating officer of Piedmont.

STATEMENT OF PAUL R. IGNATIUS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY HOWARD PUTNAM, PRESIDENT AND CHAIRMAN OF THE BOARD, BRANIFF INTERNATIONAL; ED MEYER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TRANS WORLD AIRLINES, INC.; AND WILLIAM R. HOWARD, PRESIDENT AND CHIEF OPERATING OFFICER, PIEDMONT AIRLINES, INC.

Mr. IGNATIUS. Madam Chairman, Senator Goldwater, I am accompanied by three individuals who will participate in the interrogation and also in two cases have brief oral statements to make. I will present a statement on behalf of the industry. On my right is William Howard, who is the president of Piedmont Airlines. On my immediate left is Mr. Howard Putnam, who is the chief executive of Braniff. And on my far left is Mr. C. E. Meyer or Ed Meyer, who is the chief executive of TWA.

I would like to ask, Madam Chairman, that my full statement be entered into the record, and in the interest of conserving your time and providing more opportunity for questions, I will brief the statement.

Senator KASSEBAUM. Thank you. Your full statement will appear in the record.

Mr. IGNATIUS. I can make some of the key points that I wish to make and do make in my statement by responding to some of the questions and comments that have already been made. Our view on this is well known to the committee. We oppose the legislative imposition of labor protection measures surrounding mergers, acquisitions, and other transactions, because 4 years ago, as Chairman McKinnon has just stated, the Congress in the Deregulation Act placed the airline industry in the free enterprise economy. The policies and practices that were in effect at the time when we were a tightly controlled industry and which may have been consistent with the public utility nature of that industry no longer apply to the present situation.

Senator Goldwater raised some searching questions with respect to the industry as a whole, and with respect to certain people such as senior pilots who build up seniority, and he asked the question, is this industry different in mergers from other industries that may be merging, citing a current example. Senator Goldwater, it is our view that insofar as agreements, acquisitions, and sales of assets are concerned, we are no longer any different from other industries. If in its wisdom Congress should decide that it should legislatively impose specific provisions of this kind, then it seems to me Congress must be prepared to ask itself, if we are going to do it for the airlines, should we not do it across the board in all industry.

Because regrettably, Senator, there are many places in the United States today and many industries in the United States today that are accommodating to change, changes resulting from technology, changes resulting from foreign competition, changes resulting from an economy that is not growing at rates that we would like to see it grow. And so all of us—management, labor, society as a whole—must accommodate to change.

If the Congress is unprepared to extend restrictions of this kind across the board to American industry—and there has been no indication that Congress is thinking of that—then we say, why should the airline industry be selected as the one industry for imposition of controls of this kind?

But it is even more serious. As you pointed out in your questions, we are undergoing the most serious financial difficulties in many aspects of our industry, fortunately not in all airlines, but in many. If we are going to be viable economic enterprises so we can replace this old equipment that you spoke of with new, modern, more efficient equipment, we have to be able to accommodate to the fundamental changes that have been occasioned by deregulation. And if we are hobbled in our efforts to do that, not only will the airlines be penalized, but their employees will be penalized.

I believe, Senator Kassebaum, one can make a very persuasive case that an unintended result of the so-called labor protective provisions can be the detriment of employees rather than to their benefit if it has the effect of preventing a transaction that would otherwise take place, that would help the particular airline involved to continue as a viable economic enterprise.

So, our main point is that Congress had an opportunity to consider in the Deregulation Act whether to return the airline industry to the private economy. It made the decision that it should. With respect to the sections 408–409 provisions of the act, the Congress decided that nothing special should be done here, that they should lapse, that the Justice Department should take over in this area, as it has for industry in general. The airline industry was given 4 years notice, from 1978 until the end of this year, to accommodate to this, and we see no reason why Congress now should reconsider or change because the fundamental situation is no different than it was, namely, the decision to make airlines part of the free enterprise economy.

I have one or two other quick points that I want to make. We believe matters of this kind in the United States should be left to the determination of management and labor to decide. The issue here is not the issue of labor protection per se. The issue is whether the Congress should legislatively impose certain provisions of this kind. We believe it should not. We believe it would be fundamentally inconsistent with the free enterprise nature of our industry today.

If there are labor protection matters that are important, they can be negotiated and worked out as between management and labor.

The second point I want to make is that some people who are proponents of this have said that we simply would be continuing what the CAB has always done and therefore somehow it would be benign. Chairman McKinnon has made a very clear exposition of the different environment today from what it was during the period of intense regulation. But even then, Madam Chairman, the authority of the Board was permissive and not mandatory, and some of the proposals for legislative imposition of these provisions make them mandatory and not permissive.

And second, in actual practice, with few exceptions, when the Board did impose provisions of this kind they were in merger situations and not involved in route transfers, leases, and matters of that kind. The important point—and these gentlemen with me particularly will make this point—the important point for our industry today is to be able to accommodate to change, to resolve the difficulties and set a clear course for the future.

To do that, this may mean changing the route structure, it may mean changing or swapping equipment, it may mean a different structure to carry out the purpose. These are absolutely necessary, absolutely necessary in order to continue. Mr. Putnam will make this case for you in his remarks, I am sure.

So, we ask you, please leave this to management, please leave it to labor, please leave it to the market and the economy to work out. Do not select our industry from among all others to impose congressionally mandated provisions. Let us, like all industries, which may merge or not merge, which may modify their structures or not, let us accommodate just as other industries do in the American free enterprise system.

Thank you, Madam Chairman. And I know Mr. Putnam and Mr. Meyer want to make brief additional statements, and at a later point Mr. Howard can respond to questions along with these other gentlemen. Thank you.

Senator KASSEBAUM. Thank you, Mr. Ignatius.

Mr. Putnam?

Mr. PUTNAM. Thank you, Senator Kassebaum and Senator Goldwater.

A year ago right now I left Southwest Airlines, a very profitable airline, to go across town to Braniff to see if we could save it and turn it around. Unfortunately, we were not able to do that. But we did have the freedom in our free enterprise system to try, and we tried many things.

During that year I have become very well aware of the damaging consequences that could flow from the mandatory imposition of labor protective provisions. As Chairman McKinnon mentioned earlier, earlier this year we sought to lease out on an operating agreement our routes to South America, first to Pan American and subsequently to Eastern. In both those cases the chairman of both of those airlines said there would be absolutely no deal if LPP's were imposed in any way, and the reason is very simple: Neither they nor Braniff could afford the cost of the LPP's.

Today we are in chapter 11, trying to reorganize, and the LPP's have the same adverse effect. We are and have been discussing for the last several weeks with other airlines the possibilities of various arrangements whereby Braniff aircraft, assets and employees would perform services under a contract with other airlines and get some folks back to work.

The imposition of LPP's would pose an almost insurmountable obstacle to any such agreement. In fact, one airline has already walked away from the negotiating table because of the publicity of the proposed LPP's. So, plainly such a result would do a disservice, we believe, to all involved. The public would be denied the additional service and the additional competition, which is needed in our part of the country now. And Braniff and our creditors would lose a potential source of additional revenue, and, most importantly, Braniff's employees, none of them would go back to work.

So, the LPP's would have the opposite result of what is hoped for in this proposed legislation. There is a larger concern that goes beyond Braniff, and that goes to the entire airline industry and the ability for capital investment and getting folks to lend money to this industry to buy those new airplanes that you referred to. I deal daily with banks and insurance companies, and their look at the airline industry is much different than it was several years ago.

We do not believe the false supports work. They have not in the past. And finally, we did not come to this city for a Government bailout in the case of Braniff. We felt that if we could make it work on our own and if we could reorganize it on our own, then it deserves to survive. If it does not, we do not believe the taxpayers should have to pay that burden.

Thank you.

Senator KASSEBAUM. Thank you.

Mr. Meyer?

Mr. MEYER. Thank you, Senator.

I believe that the imposition of LPP's would be largely counterproductive, particularly if your objective is the maximum employment of people in this industry. If TWA should have the opportunity to purchase assets or make a merger from another carrier, I would like an opportunity to reemploy some of the several thousand people who are now unemployed by TWA. I think they should have an opportunity for employment.

I think really that that concludes my remarks.

Senator KASSEBAUM. Thank you very much.

I would agree with you, Mr. Ignatius, that Senator Goldwater's long-range analysis was very important. And I just heard on the news this morning a forecast for the airline industry which was not an encouraging one as far as the recessionary pressures and the high cost of fuel and the toll that it has taken.

I think we should all be concerned about some of the best solutions, not just for the short term, but the changes that are occurring long range. And as an old pilot, you certainly have great insight to add to this. Seniority integration is one of the main concerns, and it is something that, obviously one does not want to see a pilot with years of seniority, with the experience that is important, that he can give to another airline, lose a job.

Labor believes that the seniority integration procedures under Allegheny-Mohawk have prevented labor unrest and that it will be difficult for the unions to negotiate seniority integration if they did not have that particular vehicle. Would any of you care to comment on that?

Mr. IGNATIUS. Let me make a first comment and then these other gentlemen may want to add some additional thoughts on it.

Starting with the beginning of your question, the longer range implications, Senator Goldwater's searching questions and comments in the long run applied to the economy as a whole. No one likes to see someone with seniority, whether that person is an airline pilot or an expert technician in a steel mill, displaced for economic or other reasons. There is a national problem here.

What we have always thought in this country and under the free enterprise system was that if we let the system operate with flexibility, that over the long run there would be a means of growth, with new jobs coming into being to replace old jobs. We have had certain protections in our society with respect to unemployment and retraining and so forth.

My comment is that once again this is a national problem. Some countries have approached it differently. The Japanese, for example, have placed a lot of emphasis on lifetime job security. We have not done that to the same extent in this country.

But I think the immediate point in this hearing is not how we handle long-run problems of this kind—and assuredly, they are important problems, perhaps more important today in some ways than they were before—but whether the legislatively mandated imposition of labor protection provisions on mergers and transactions would help or hinder that situation.

And it is our position, as Mr. Putnam and Mr. Meyer have just said, that it would hinder rather than help, because it could become an obstacle to a transaction that would otherwise take place, that might provide jobs that would otherwise be lost.

The second point is the shorter run aspect of your question, namely, under bargaining arrangements or labor-management discussions can seniority integration take place or does somehow one have to have a law to insure that it would. Madam Chairman, I can only believe that with the hundreds of mergers that take place, there must be a way to integrate seniority lists without a law.

If one supermarket decides that it wants to merge with another supermarket and there are union employees who are checkout counter people at the first market and people with the same skills belonging to the same union at the other supermarket, there must be some way that these matters are handled in that particular instance by the labor individuals and the management individuals in the transactions.

When a merger takes place, there is a good deal of work looking at management structures, commitments to labor, financial obligations and so forth in putting the two operations together into one. We do not have Congress passing laws saying, in the supermarket or the drug industry or whatever, you have to do it along a certain way. This is left in our country for management and labor to work out, and they do it and they do it every day.

There are hundreds of mergers and transactions that take place at any particular time. So we see no need for a law in our industry to make that happen. It can happen as it does every day.

Senator KASSEBAUM. So you have no serious opposition as an industry to seniority integration?

Mr. IGNATIUS. Perhaps the others ought to comment on this.

Senator KASSEBAUM. And let me say, not just in mergers or acquisitions, but how about route swaps?

Mr. IGNATIUS. Well, I think that that is a consideration in a route swap, as are other considerations such as, for example, Mr. Meyer's point about obligations to employees of one's own company who are unfortunately furloughed, as opposed to obligations that may exist in others. That is to say, there are equities here that our system and our society depends upon individuals and groups of private individuals to work out in order that these equities can be satisfactorily accommodated.

Our point is that the Congress should not select out one industry and say, in our wisdom we are going to decide what the equities ought to be in this, rather than free private individuals or institutions doing it.

Senator KASSEBAUM. How would you answer the question, then, that has been raised, that we are continuing to impose, though, through the legislative process LPP's in other industries, such as the railroad industry, which was regulated and is now deregulated?

Mr. IGNATIUS. Well, I think there is a substantial difference. Let us take the railroad industry for a moment. The essential difference between the railroad industry and the airline industry is tracks. You do not have free entry in the railroad industry to the extent you do in the airline industry, because you have got to lay down a roadbed to do it.

So that while they have been to some extent deregulated, in no way have they been deregulated like the airlines. There is still an ICC, but there is not going to be a CAB.

We have seen the ability of the airline industry to quickly move into new routes, which would be far more difficult in the railroad industry. Second, Senator Packwood mentioned the telephone company. While there are fundamental changes that are taking place in the telephone company as a result of this explosive technological change that we have seen in electronics, the fact of the matter is that the local telephone companies still have by and large the characteristics of local public utilities.

Not true of the airlines. New airlines have come in, old airlines have changed their route structures. Freedom to enter, freedom to price are substantially achieved in the airline industry today, and I think that is quite different in structure and in operation from a railroad which has this massive investment in ground trackage, and the telephone company, which still has, despite the change, still has many of the aspects of a local public utility.

In short, our situation is substantially different.

Senator KASSEBAUM. How would you answer Senator Packwood's question about why the carriers have really been very acquiescent to the Board's imposition of the use of Allegheny-Mohawk LPP's, and there has not been any major challenge to that?

Mr. **Ignatius**. My understanding of that, Madam Chairman, is that over many years of the past the Allegheny-Mohawk provisions have been applied in mergers under the tightly regulated environment that prevailed. Second, more recent cases of mergers since deregulation, I can only believe—and I believe Chairman McKinnon alluded to this—that there was an interest in a speedy review of the situation and a decision in it, and the labor protection aspects were part of that.

Once again, I want to make the point, that I do not think we are talking labor protection per se. If the parties are interested in that, they can talk about that. What we are talking about in this hearing, and indeed the question that you pose, is: should Congress mandate these provisions? That is the issue.

And we say, no, Congress should not mandate it for an industry that Congress has deregulated, and if labor protection matters, job security matters, are important then the individuals involved should address them. That is our position.

Senator **Kassebaum**. This is a question that any of you might want to answer. Do airline managers—and it goes back to what Senator Packwood asked—have severance pay for mergers written into their contracts?

Mr. **Meyer**. I can answer first. In the case of TWA, we have no severance arrangements.

Mr. **Putnam**. When I went to Braniff, I went under an employment agreement, but what I was too naive to know was that under bankruptcy all executory contracts can be disavowed that quick.

My golden parachute did not open.

When I got to Braniff and Braniff was fully organized and had labor contracts for all the employees, several of the officers came and said, what can you do to protect us. And we did put in what is called a golden parachute that, should another company come and take over Braniff, then there was a severance pay in there for those officers.

But that was negotiated by management, just as management and employees negotiate a labor contract. It was not legislated. None of those contracts are any good under bankruptcy, either.

Senator **Kassebaum**. Mr. Meyer, I would like to ask a question regarding TWA. The LPP's were applied to the Pan Am-TWA route swap in the mid-1970's. From TWA's perspective, did the LPP requirement facilitate, do you think, the completion of that transaction?

Mr. **Meyer**. I would first point out that that was during the regulated period of the industry. I do not think it facilitated the transaction, except that I believe it was necessary to get it done at the time. We later did settle that, I believe, for about $2 million.

I think it was also done at the time when both Pan American, TWA, and the industry were in severe economic plight, and we were looking for a way to continue going on a profitable basis, if possible. So those were under very trying circumstances that we had agreed to that. And it was, again, a regulated environment.

Senator **Kassebaum**. Some of the airlines really would like to see Allegheny-Mohawk as still a basic framework. Others would like to move entirely away. Of course, if this was not a legislated imposition then whatever provisions would be important to one particular situation would differ from another, I assume.

But I think that for many it is a real question of whether Allegheny-Mohawk itself still is viable for the present labor-management relationships. Do any of you have any particular comment on that?

Mr. **Ignatius**. I would like to comment on that. I believe we have had a clear position on this with the Air Transport Association testifying on behalf of the industry on many occasions and responding, in addition to hearings, to this issue. Our position is that what Congress did in the 1978 act should be left as it was, consistent with Congress decision to deregulate. That is to say, the section 408-409 authority should expire and the Justice Department should have cognizance over this area of our operation, as it does for all industry.

Second, as you know, Madam Chairman, faced with the complex issues that you were, you produced a compromise that essentially held the world steady for 2 years and preserved the Board's current authority. That was not our choice, that was not our position. But I told you then and I tell you again, that is acceptable to us. We will live with that, but it is not our preferred solution.

Our preferred solution is that all of this lapse. So therefore I do not believe that the views among the airlines vary to the extent that this may have been implied in your question. The airlines have differing views on the margin of a lot of issues, but I do not believe there is any fundamental difference with the position that I have articulated here on behalf of the industry as a whole.

Mr. **Meyer**. Could I add some personal observation on that? TWA participated, or we did two merger studies during the 1970's. Both of those merger studies were largely turned down because of the economic consequence of the imposition of the labor protective provisions that we saw at that time.

Senator **Kassebaum**. Mr. Howard, Piedmont has expanded substantially over the last 2 years and it has presumably, I think, purchased new equipment. How would the application of labor protective provisions to the sale or purchase of at least 20 percent of a carrier's fleet affect your approach to expansion?

Mr. **Howard**. Well, in that question, as you indicate, since deregulation we have made some modest profits. We have looked during recent months at the possibility of infusing some capital in one or more other airlines that could use that capital infusion. That infusion in our thinking would have been done through the purchase of stock.

As we read the compromise proposal, what it really says is that if we were to acquire as much as 20 percent of the stock of another carrier—and I might add parenthetically that the carriers we have been looking at were totally remote geographically to our own route structure. We would not for a moment assume that the two routes would be amalgamated. It would simply be a capital infusion.

But as we read the compromise proposal, that says that we would be required to put the seniority list of the two carriers together, something that I am confident neither carrier would want and that the unions of neither carrier would want. So that I think if you think this thing through thoroughly, it goes far beyond what the carriers themselves or the unions themselves would possibly want.

The result really would be to inhibit the infusion of capital into a carrier whose employees would very much favor that infusion.

Mr. IGNATIUS. Could I add to that? It would seem to me that is one of the main points that we want to make. I am sure when Mr. Howard refers to the compromise proposal, he is talking about the compromise that came about in the conference, as opposed to the Kassebaum compromise that simply extended present authority.

Senator KASSEBAUM. This was a question that was raised on the floor, too, as we were debating that, because I think there was a great concern that that particular aspect would be unproductive.

Senator Goldwater.

Senator GOLDWATER. Well, I think Mr. Ignatius has really put his finger on what this is all about. The airline industry is now in the free market, and I have to say at one time I was opposed to deregulating airlines, and a large part of that opposition was wrapped up in what has now come to pass.

I was asked by crew after crew after crew to oppose the deregulation of airlines. I do not know if their observation was caused by a dominating fear of the loss of jobs, because I think it was rather obvious at that time that the airline industry through competition, through demand, was going to go through a series of mergers. So it is a free market situation, and I frankly cannot see how we can write different kinds of rules for the airlines than we have for, say, the railroads or the bus drivers or the truck drivers, or any other union.

Now, I see a basic problem here. It involves to a large extent the morale. And I am speaking now more of the crew than I am the mechanics and avionics people and people like that, although they are certainly affected.

Let us take a captain on airline A, who probably spent 15 years getting into the left seat, and we have a pilot with the same seniority in airline B. And yet, a merger is coming between airline A and airline B. What happens then to the man in the right seat, working his head off to get in the left seat, who knows darn well that his chances are not very good of getting in that left seat if we allow the pilot in airline B, the first pilot, to be able to knock down first pilots of less experience in airline A?

So frankly, I do not think that this is something that the Congress should get into.

Now, I happen to be a member of a labor union. A lot of people do not believe that, because a lot of labor unions hate my guts. But that does not bother me. I pay my dues.

So that is my opinion and my feeling. I think we are playing with real dynamite here. And I have not talked with any crewmembers or any members of the Air Line Pilots Association. I just think with a free market system we have to allow the airlines to operate under the same conditions that we have other industries operating under, and I carry this on down into the same kind of mergers that we have been witnessing lately between Martin Marietta and God knows who else.

But we are going to live through a lot of mergers, we are going to live through a lot of changing working conditions that none of us really see now.

So, Madam Chairman, I have no questions. I do not want to sound prejudiced. I believe in the union system. But I will be darned if I know legislatively how we can change the rules that are already established.

I have nothing else.

Senator **Kassebaum**. Thank you very much.

Mr. Putnam, I just have one further question I would like to ask you, because you have gone through some very traumatic times recently, and I believe you have stated that you felt that mandatory imposition of LPP's would seriously hamper any joint venture of Braniff with any other carrier. And I wonder what costs you feel would be there that would be additional, that would hinder Braniff's getting back on its feet.

Mr. **Putnam**. Well, we have a tremendous debt to discharge in some fashion, and part of that debt would be in the other carrier's view the imposition of LPP's and having to pick up an additional cost of airlines or employees that they really have no need for or interest in, because of what Ed said, maybe they have their own employees on furlough. They are just afraid to take on that additional financial responsibility.

[The statement follows:]

STATEMENT OF PAUL R. IGNATIUS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA

My name is Paul R. Ignatius. I am President and Chief Executive Officer of the Air Transport Association of America, which represents virtually all of the major scheduled airlines of the United States. I am accompanied by Messrs. William R. Howard, President and Chief Operating Officer, Piedmont Airlines; C. E. Meyer, Jr., President and Chief Executive Officer, Trans World Airlines, Inc.; Howard D. Putnam, Chairman of the Board and President, Braniff International; and Philip J. Bakes, Executive Vice President, Continental Airlines, Inc.

We appreciate the opportunity to present airline industry views on the question raised in the Chairman's letter of September 10, 1982—that is, whether Congress should mandate that certain labor protective provisions be imposed upon various inter-carrier transactions such as mergers, acquisitions and route transfers."

Congress should not impose special labor protection requirements and obligations on the airlines. There is no reason or justification for airlines to be treated differently than other elements of our free enterprise economy.

We opposed the Conference Report on H.R. 5930 and the conference-adopted airline labor protection amendment for failure to follow the normal legislative review process and for compelling substantive reasons that I will review in this statement.

I would like to put our views in context with several brief observations about the airline industry. First, we are a deregulated industry. Therefore, labor protection questions should be left to management and labor as they are in other non-regulated industries, and not subject to special legislative manadate. Secondly, we are an industry under severe economic stress. Thus, we need the flexibility provided by deregulation to adjust quickly to changing conditions through the most productive possible use of personnel and financial resources. If the industry is hobbled by the imposition of costly restrictions, it will not be able to provide employment or remain viable. Finally, we are an industry whose working conditions and compensation make its employees among the very highest rewarded in the nation. It is important that this be kept in mind in any discussions of special airline labor legislation.

The Airline Deregulation Act of 1978, Public Law 95-504, was designed to move the airlines from the intensive public utility-type regulation applicable to air commerce since 1938 to an open, competitive air transport system with the economic risks and opportunities common to other industries. Senate Report No. 95-631 aptly described its purpose as being ". . . to return the air transportation industry to our free enterprise economy." That carefully constructed Congressional purpose has been largely achieved. Airlines no longer are protected from competition; they no longer hold public utility-type franchises. In short, except in matters of safety regulation, the airlines must operate much like any other business enterprise. While this has brought many opportunities, it has been accompanied by much greater risk—including, unfortunately, the risk of bankruptcy.

As contemplated by the Congress, returning the airlines to the free enterprise economy called for the termination of long-standing federal practices that protected and regulated airlines and shaped the manner in which they conducted their business. In reaching this decision after many months of careful study, Congress made the clear determination that the federal government should not intrude in airline activities any more extensively than it does for unregulated industries. Consistent with that conclusion, the Congress acted to transfer the authority for merger-related issues to the Department of Justice, on January 1, 1983, where matters of this kind are handled for non-regulated industries. A transition period of over four years was provided to accommodate this transfer.

While Congress did not choose to include in the 1978 Act any labor protection provisions regarding mergers or similar transactions, it did adopt, unwisely in our judgement, Section 43 calling for a unique national "hiring hall" scheme for the airlines. The airline industry strongly objects to this intrusion into their hiring practices, and we understand that this issue will be reexamined by the Subcommittee at a later date. Our concern at the moment is the important subject of this hearing, namely whether airline mergers, acquisitions, route transfers, asset sales, and other transactions should be conditioned by the Congress in the belief that doing so would somehow protect labor.

There are three fundamental reasons why special merger-related provisions should not be mandated by the Congress. First, the enactment of these provisions would impose controls, restrictions and impediments at a time when the airline industry is supposed to be freed from burdensome government regulation. Second, intrusive legislation of this kind would severely erode the collective bargaining process because it would arbitrarily remove some issues from the bargaining table and directly inject the federal government into matters that are the exclusive concern of labor and management. Third, it suggests that Congress is prepared to extend similar protection to the employees of other industries, particularly those whose employees are less fortunate than airline employees. Since Congress obviously is not going to impose such restraints across the board on U.S. industry, it clearly should not do so for the airline industry.

Proponents of this so-called labor protection legislation have contended that it would merely continue Civil Aeronautics Board policy and practice in this area, and therefore is benign. Plainly this is not so. First, the CAB practice was carried out under an intense public utility-type regulatory process that no longer exists. Secondly, even then the CAB's authority was permissive. Under the proposals that have been suggested, the authority would be mandatory. More important, CAB practice has involved merger cases, almost without exception. The authority that would be granted under the mandatory proposals would go beyond mergers to include such matters as route transfers and sale of assets. Thus, it would greatly extend prior CAB practice, and its effect on the airline industry would be anything but benign.

It should be noted that CAB's first and subsequent inposition of labor protection conditions originated from an administrative determination, not from any statutory command, forming a part of the intensive public utility-type regulation then firmly in place. Prior to 1978, the primary concern of the CAB was the potential, however remote, of labor unrest interfering with the successful completion of inter-carrier transactions subject to its approval under the Federal Aviation Act.

As a consequence of this concern, the CAB developed labor protection provisions for application at its discretion on a case by case basis. Its most recent formulation of them was in 1972 in the *Allegheny-Mohawk Merger Case.* These provisions for the most part have been applied to airline mergers; that is, where the transaction fundamentally transformed the airlines involved in it. The CAB has regarded their imposition not only as discretionary, but as an "extraordinary" form of relief. Moreover, it has stated that its concern about the potentially disruptive effects of labor unrest on the air transportation system, and not a decision to promote employee welfare, prompted it to impose these provisions.

The CAB significantly revised its labor protection policy in 1978, when it expressed a desire to diminish its involvement in this area. Since that time it has reasoned that in light of the deregulation of the airline industry, labor protection provisions have become an undesirable governmental intrusion and has said that it will impose them only in special circumstances. Those instances in which the CAB has imposed labor protection provisions since the enactment of the Airline Deregulation Act reflect the voluntary agreement of the parties to such provisions, in the interest of prompt CAB approval, rather then a resuscitation of the CAB's pre-Deregulation Act policy.

It is clear, therefore, that enactment of labor protection legislation would fundamentally depart from recent CAB policy. It would reinject the government into a matter the CAB has indicated that labor and management ordinarily should resolve. It also offers the prospect of vastly expanding the scope of federal government involvement in this area. Even relatively minor transactions would be subject to labor protection provisions. Some of the proposals that Congress has considered in the last few months would have exposed a host of inter-carrier transactions of various sizes, such as leases, sales and contracts involving airline property, to labor protection requirements that up to now have not been subjected to those requirements.

In the airline industry of today it is critically important to be able to respond quickly and decisively to changing circumstances. Such responses might range from a consolidation of operations to the lease of equipment. As is necessary for other industries, the airlines must have the ability to seek the most productive possible use of their resources in order to assure their continued strength and viability. Surely, this responsiveness is in the very broad interest of airline employees. Mandated labor protection requirements of the kind under discussion might well have the effect of discouraging or preventing, because of their complexity and potential cost, the very actions considered necessary to avert severe contractions, or worse, and the consequent effects on employment.

The potential costs of mandated labor protection requirements under today's circumstances could be significant. First is the cost of jobs that might not be preserved if the labor protection requirements prevented the necessary transactions from taking place. In this connection, the statement issued by Howard D. Putnam, Chief Executive Officer of Braniff, on August 10, 1982 is illuminating. Mr. Putnam stated: "The proposed legislation, if enacted, would raise serious and perhaps insurmountable obstacles in our path and make it far more difficult for us ever to reorganize and emerge under Chapter 11." Secondly, would be the direct costs of the protective provisions themselves. One provision, for example, requires that separated employees be paid 60 percent of their annual compensation for up to five years. With airline compensation levels among the very highest in U.S. industry, it is possible to construct extremely costly illustrative examples, but whatever the actual cost turned out to be it is clear that it would be substantial. The cost penalty quite clearly could prevent the transaction from taking place to the detriment of the airline's economic viability and the long run security of airline jobs.

A law of the kind being proposed would be uniform in application, making no distinction between, or accommodation to, differing conditions or circumstances affecting individual airlines to which it applies. It would treat a healthy airline no differently than an airline facing serious economic problems. It would treat a relatively simple route transfer the same as a complex merger. It would create an unyielding and inflexible statutory mandate which ultimately would prove to be inimical to the best interests of the public as well as labor and management.

Moreover, the legislation under discussion would undermine the collective bargaining process. It would reduce the ability to negotiate freely on all issues of interest to both parties because of its arbitrary disposition of some issues favoring labor. It would create an artificial floor for any negotiation undertaken by the parties seeking an accommodation outside the statutory conditions. It would tilt any negotiation in favor of labor since there would be no need to bargain for labor protection benefits. In short, labor is seeking to secure by legislative fiat benefits that would otherwise have to be obtained at the bargaining table, leaving it free to concentrate on higher and higher levels of compensation.

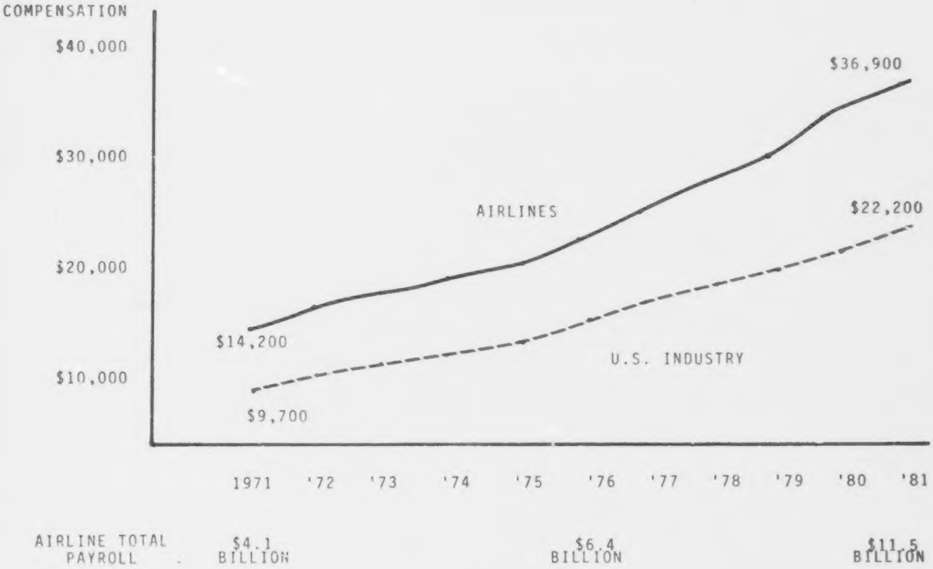
Airline labor needs no such bargaining advantage, as shown in Attachments A through C to this statement. Attachment A indicates that the average compensation in 1981 for the more than 300,000 airline employees was $36,900, some 66 percent higher than the U.S. industry average. Attachment B indicates that airline employees in a wide range of crafts enjoy compensation levels far higher than their counterparts in other industries. Attachment C focuses upon pilot compensation, indicating that pilots in 1981 earned average annual compensation of $91,000 for 44.7 flying hours per month. The most senior pilots, of course, earned substantially more than this, with B-747 senior captains earning more than $150,000 per year.

Moreover, there are other significant benefits available to airline employees, not the least of which are severance protection benefits. Generally, labor agreements in the airline industry already include severance pay provisions, one of the major objectives of the proponents of labor protection legislation. What this makes clear is that labor protection provisions of the kind under discussion here are more properly the subject of collective bargaining, rather than government intervention.

We urge you to reject any statutory imposition of airline labor protection provisions. There is no reason or need to single out the airline industry for such legislation. As reported in the Directory of Corporate Affiliations, published by the National Register Publishing Company, there were 111 corporate mergers and acquisitions involving non-airline corporations in the United States last year (see Attachment D). Reports so far this year suggest an even greater number in 1982. Our free enterprise economy has created an environment where many businesses need to buy, sell, lease or merge operations in order to stay alive. It is happening every day across the nation. Yet, we are unaware of any public demand for special legislation applicable to the employees of the companies involved. We do not believe that Congress should mandate that an airline industry, which it has deregulated, be treated differently.

ATTACHMENT A

AVERAGE ANNUAL COMPENSATION PER EMPLOYEE
1971 - 1981



SOURCE: CAB Form 41 and U.S. Department of Labor

ATTACHMENT B

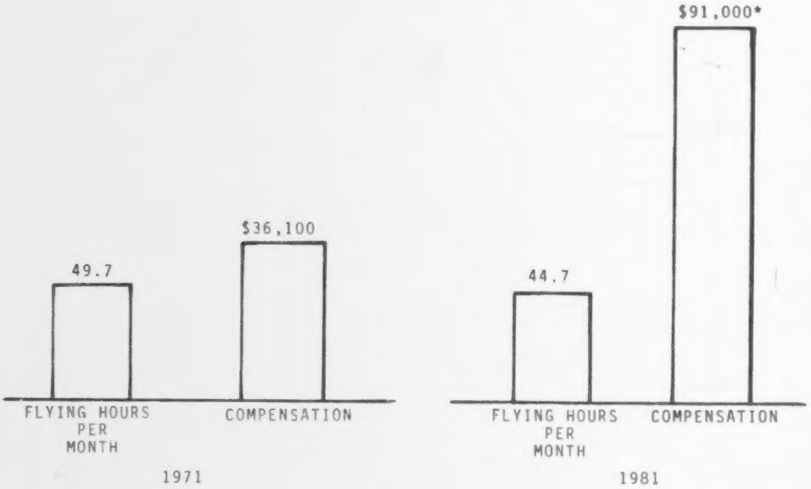
EARNINGS COMPARISON AIRLINES VERSUS U.S. INDUSTRY (1980)

	U.S. industry	U.S. airlines	Percent airline greater than U.S. industry
Average weekly earnings:			
Computer operators	$263.00	$364.00	38.4
Computer analysts	454.00	531.00	17.0
Computer programers	354.00	425.00	20.0
Secretaries	263.00	315.00	20.0
Accounting clerks	216.00	285.00	31.9
Messengers	171.00	210.00	22.8
Average hourly earnings:			
Mechanics	9.72	12.43	27.9
Ground helpers	7.10	10.16	43.1
Janitors	4.87	8.72	79.1

Source: U.S. Department of Labor.

ATTACHMENT C

FLYING HOURS AND COMPENSATION PER PILOT
U.S. SCHEDULED AIRLINES



SOURCE: CAB FORM 41

*$96,300 for Trunk and Local Airlines

ATTACHMENT D

ACQUISITIONS AND MERGERS (1981)

Company	Acquired by (merged with)
AVC Corp.	Raybestos-Manhattan, Inc. (Milford Rivet & Machine Co.).
American Investment Co.	Leucadia National Corp.
American Technical Industries, Inc	Papercraft Corp.
Ampex Corp	The Signal Companies, Inc.
Ansul Co	Wormald Americas, Inc.
Applied Digital Data Systems, Inc	NCR Corp.
Atco Industries, Inc.	FSC Corp.
Automated Building Components, Inc	Redland Brass Corp.
Bache Group, Inc.	Prudential Insuarnce Co. of America.
Barth Spencer Corp	Darby Drug Co.
Barton's Candy Corp	American Safety Razor Co.
Beldon Corp	Crouse-Hinds Co.—Cooper Industries.
Brooks & Perkins, Inc	AAR Corp.
Buffalo Forge Co	Ampco-Pittsburgh Corp.
The Bunker Ramo Corp	Allied Corp.
Burlington Northern, Inc	(St. Louis San Francisco Railway Co.).
C&K Petroleum, Inc	Alaska Interstate Co.
Caldor, Inc	Associated Dry Goods Corp.
Campbell Industries	Marine Construction & Design Co.
Carpenter Paper Co. of Nebraska	Alco Standard Corp.
Cavitron Corp	Cooper Laboratories, Inc. (parent).
Chessie Systems, Inc	(CSX Corp.).
Child World, Inc.	Cole National Corp.
The Citation Cos	Dayton-Walther Corp.
Commonwealth Natural Resources, Inc	Columbia Gas Systems, Inc. (parent).
Connecticut General Mortgage & Realty Investments	Prudential Insurance Co.
Conoco, Inc.	E. I. du Pont de Nemours & Co.
Crestmont Oil & Gas Co	Occidental Petroleum Corp.
Crouse-Hinds Co	Cooper Industries, Inc.
Danley Machine Corp	Ogden Corp.
Discount Fabrics, Inc	Fabri-Centers of America, Inc. (parent).
Documation, Inc	Storage Technology Corp.
Doremus & Co	BBDO International, Inc.
Drug Fair, Inc	Gray Drug Stores, Inc.
Drum Financial	St. Regis Paper Co.
Earth Resources	Mapco, Inc.
Electrographic Corp	Encyclopaedia Britannica, Inc.
Franklin Mint Corp	Warner Communications, Inc. (parent).
Freeport Minerals Co	(McMoran Oil & Gas Co.).
GK Technologies, Inc	Penn Central Corp.
GMR Properties	Grubb & Ellis Co.
Gateway Transportation Co.	Maislin Transport of Delaware.
General Health Services, Inc.	Hospital Corp. of America.
Gilford Instrument Laboratories, Inc	Corning Glass Works.
Ernest W. Hahn, Inc.	Trizec Western, Inc.
Hain Pure Food Co., Inc	Ogden Corp.
Hanover Square Realty Investors	(Pearce, Mayer & Greer, Inc.).
Hobart Corp	Dart & Kraft, Inc.
Houston Oil & Minerals Corp	Tenneco, Inc.
Huck Manufacturing Co	Federal Mogul Corp.
Huyck Corp	BTR, Inc.
Integon Corp	Ashland Oil, Inc.
International Foodservice Corp	Action Corp.
Intersil, Inc	General Electric Co.
Investment Corp. of Florida	Ashland Oil, Inc.
Iowa Beef Processors, Inc	Occidental Petroleum Corp.
Kennecott Corp	Standard Oil Co. (Ohio).
Kenton Corp	(Rapid American Corp.).
Kirsch Co	Cooper Industries, Inc.
Knox Lumber Co.	Southwest Forest Industries, Inc.

ATTACHMENT D—Continued

Company	Acquired by (merged with)
Koehring Corp	AMCA International Corp.
Kuhn's Big K Stores Corp	Wal-Mart Stores, Inc.
Lafayette Radio Electronics Corp	Wards Co., Inc. (parent).
Lake to Lake Dairy	Land O' Lakes, Inc.
Lightolier, Inc	Bairnco Corp.
Ludlow Corp	Tyco Labs., Inc.
Macke Co	Allegheny Beverage Corp.
McKeon Construction	Barratt America, Inc.
McMoran Oil & Gas Co	(Freeport Minerals Co.
Multi-Amp Corp	Indian Head, Inc.
NN Corp	Armco, Inc.
National Liberty Corp	Capital Holding Corp.
New England Nuclear Corp	E. I. du Pont de Nemours & Co.
Nytronics, Inc	Bastian Industries, Inc.
Omni Spectra, Inc	M/A Com, Inc.
Oscar Mayer & Co., Inc	General Foods Corp.
Peter Paul Cadbury, Inc	Cadbury Schwepps U.S.A., Inc.
Pullman, Inc	Wheelabrator-Frye, Inc.
R. H. Medical Services, Inc	Mediq, Inc.
Reliance Universal, Inc	Tyler Corp.
Republic National Life Insurance Co	Gulf United Corp.
The Ret Income Fund, Inc	(Cyprus Corp.).
Richford Industries, Inc	Great American Industries.
SW Industries, Inc	BTR, Inc.
St. Joe Minerals Corp	Fluor Corp.
St. Louis-San Francisco R.R. Co.	(Burlington Northern, Inc.).
Sav-on-Drugs, Inc	Jewel Companies, Inc.
F&M Schaefer Corp	Stroh Brewery Co.
Season All Industries, Inc	Redland Brass Corp.
Shaw Barton, Inc	Heritage Communications, Inc.
Shearson Loeb Rhoades, Inc.	American Express Co.
Sigma Instruments, Inc	Wheelabrator-Frye, Inc.
Spector Industries, Inc	Telecom Corp.
Sperry & Hutchinson Co	Baldwin United Corp.
Standard Alliance Industries, Inc	Walco National Corp. (parent).
Standard Brands, Inc	(Nabisco, Inc.).
Strange Co	McCormick & Co., Inc.
Systems Engineering Laboratories, Inc	Gould, Inc.
Teleprompter Corp	Westinghouse Electric Corp.
Texasgulf, Inc	Elf Aquitaine, Inc.
Texon, Inc	Emhart Corp.
Travelodge International, Inc	Trusthouse Foret, Inc.
Treadway Co., Inc	Fair Lanes, Inc.
Unibraze Corp	Sanitas Service Corp.
United Guaranty Corp	American International Group.
United Refining Co	Coral Petroleum Co.
United States Filter Corp	Ashland Oil, Inc.
VSI Corp	Fairchild Industries, Inc.
Wabash, Inc	Dyson, Kissner Moran Corp.
Wallace Murray Corp	Household International, Inc.
Western Kentucky Gas Co	Texas American Energy Corp.

Source: "Directory of Corporate Affiliations," National Register Publishing Co.

Senator KASSEBAUM. Thank you very much. We appreciate the panel's testimony.

I regret to say there is a vote on now, and the next witness is Captain O'Donnell, president of the Air Line Pilots Association. And Captain O'Donnell, why don't you come on up. And I do not know whether to get started. I think we will go ahead, if you do not mind, and get started, and then when we are interrupted I will go over and vote. I will wait as long as I can.

It is a pleasure to welcome you here.

STATEMENT OF CAPT. J. J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Mr. O'DONNELL. Thank you very much, Madam Chairman. On behalf of the Air Line Pilots Association [ALPA], I appreciate this opportunity to testify before you today on the issue of labor protective provisions for airline employees affected by major corporate transactions, a subject which is of critical importance to my members as well as all the other airline employee groups who are represented here today.

With me today, on my right hand, is Mr. Arthur Brennan, who is director of ALPA's representation department, and Mr. Jim Tello on my left, who is a staff attorney who specializes in CAB matters and particularly labor protective provisions.

I have a rather lengthy prepared statement which I would like to, with your permission, submit with the record.

Senator KASSEBAUM. Thank you. That will be done.

Mr. O'DONNELL. I will proceed with a brief summary statement and then respond to any questions you have or members of the subcommittee might have.

Madam Chairman, I personally want to compliment you and thank you for moving ahead with the war risk conference report, which gives us all additional time to work on this labor protective issue while the CAB continues its traditional practice under section 408 of the act.

I am also grateful to you for scheduling this hearing. We believe it is an important step in the resolution of this issue, which is so vital to airline employees and important for labor-management relations in our industry. I am hopeful that following this hearing we can work together to move legislation expeditiously through the Congress early next year.

My only regret is that we did not have this hearing 3 or 4 months ago so that the public debate leading up to the Senate vote on August 12 could have focused on fact and logic, rather than on half-truths and exaggerations proclaimed in the newspaper editorials and articles.

Apparently the fact that a major part of our testimony in both the Senate and House in July 1981 during the hearings on this CAB early sunset legislation dealt with the continuation of Allegheny-Mohawk type labor protective provisions did not convince the Congress or the industry that we were serious about this issue. It should be clear to all now that we were serious about it then and we continued to believe strongly that legislative action is absolutely necessary.

Obviously, it is difficult to discuss this issue without succumbing to the temptations to address the charges and assertions which confused the entire debate prior to the Senate vote last August. However, I will attempt to focus on what I believe are the three legitimate issues to surface in this debate:

No. 1, why are LPP's needed in the airline industry today when no other industries have them?

No. 2, why should LPP's continue to be imposed on the airline industry in a deregulated environment?

And No. 3, why should LPP's be imposed by Federal statute rather than through the collective bargaining process?

The answer to each of these questions is relatively simple if one understands that the nature of the airline industry, its work force, and the Federal law, the Railway Labor Act, which governs its labor-management relations.

The answer to the first question is twofold. In the first place, the airline industry is different from all other U.S. industries in that seniority governs virtually every facet of the airline employee's wages and working conditions. Therefore, whenever any substantial corporate restructuring affecting two or more companies occurs such as mergers or acquisitions that will affect the job status of the employees, there must be some mechanism to provide for the protection of the work force in a fair and equitable manner according to their seniority.

Second, there is a matter of national policy and Federal law. The airline industry, like the railroads, has unique status as a vital transportation industry. This policy and law, as embodied in the Railway Labor Act, is intended to protect the public interest by providing a process for resolving labor-management disputes without resort to work stoppages or strikes.

The Allegheny-Mohawk labor protective provisions and their predecessors have provided mechanisms to accomplish this objective in cases of corporate restructuring.

Turning to the second question, some have argued that although the imposition of LPP's by the Government was appropriate in a regulated environment, they should not be continued now that the airlines have been deregulated. They contend that management's hand should not be tied by the imposition of LPP's as they try to adapt to a new economic and operating environment.

The fact of the matter is that deregulation did not change either of the two conditions which make the airline industry unique, as we discussed a moment ago, the seniority factor and the national policy and law governing airline labor relations, and therefore national policy did not remove the need for labor protective provisions.

During the debate this summer, we kept hearing that the continuation of Allegheny-Mohawk would prevent the airlines from engaging in innovative transactions to maximize efficiency and productivity necessary for their prosperity under deregulation. We could never find out what this phrase meant, but we could only surmise that what some airlines were contemplating was some sort of corporate restructuring designed to dump career employees and replace them with new hires at base wages.

I would sincerely hope that the Congress and the public at large would not encourage or condone such a practice as either being in the public interest or fair treatment of human beings.

Senator KASSEBAUM. Captain O'Donnell, excuse me. I am going to have to go vote quickly. Senator Riegle is on his way. Maybe, if this is a stopping point, if you would not mind waiting for just a few moments.

Mr. O'DONNELL. Not at all.

Senator KASSEBAUM. Thank you, and I'm sorry.

[Pause.]

Senator KASSEBAUM. My apologies. Please continue, Captain O'Donnell.

Mr. O'DONNELL. If I may just pick up a line for the record purposes. We could never find out what the phrase meant, is where I left off, but we could only surmise that what some airlines were contemplating is some sort of corporate restructuring designed to dump current employees and replace them with new hires at current base wages. I would sincerely hope that the Congress and the public at large would not encourage or condone such a practice as either being in the public interest or fair treatment of human beings.

Perhaps during these hearings the airline witnesses will all elaborate in more detail on the nature of these so-called innovative transactions.

The third question asks why LPP's should not be left to the collective bargaining. It is virtually impossible to provide through negotiations a procedure for integrating seniority lists that would be enforceable.

On the matter of compensatory benefits, you will recall that the language in the conference report provided for a sunset of the benefits in 5 years, which would give the various employee groups a reasonable period of time to negotiate them. I would expect that any future bill would contain similar provisions.

Finally, I would be remiss if I did not comment briefly on the question of benefit payments under Allegheny-Mohawk, as this seemed to dominate the debate last summer. After extensive research, we have determined that only one transaction in history actually resulted in substantial payment under the benefit provisions. That was the Pan American-TWA route swap of 1975.

In that case TWA pilots received a total of $1,492,610, of which the highest individual payment was $14,411 and the lowest $7. The average payment was $6,352. Pan American pilots received a total of $4,212. We are told by the counsel representing Pan American flight engineers that only six or seven have yet settled with the company for a total compensation of approximately $40,000. The remainder of the claims are still being contested. Finally, we are advised that the employees represented by the IAM received payments totaling $456,000 in the Pan American-TWA route swap.

After considerable effort, we have not been able to identify any pilot dismissal or displacement claims resulting from the Allegheny-Mohawk merger itself in 1972 or in either the North Central-Southern or Republic-Hughes Air West mergers. Any claims paid in these cases apparently were in connection with moving and relocation expenses which may have been covered by contract anyway.

In short, the highly publicized costs to carriers of these LPP's do not appear to have any relationship to the facts as evidenced by the experience over the past 30 years.

Since the airlines have embellished the issue of labor protective payments to pilots, to the delight of the press, I think it is only fair to point out that they have never been particularly timid as to their own executives with rather generous LPP's should their employment be terminated for one reason or another, including mergers.

It is a matter of public knowledge that, while the National-Pan American merger did not result in any labor protective payments to nonmanagement employees, several National Airline executives received severance payments in the six-figure level. One such executive, Mr. Jack Donlan, who is making quite a name for himself these days in a determined effort to break the National Football League's Players Association strike, received approximately a $375,000 payment for his job loss, and we call that labor protective provisions.

Apparently these executive LPP's have never deterred the airlines from entering into various transactions as they alleged have been the case with the Allegheny-Mohawk labor protective provisions.

I would suggest that this subcommittee balance the record by eliciting from the carriers who have recently undergone corporate changes the records of payments to executives either under contract or by agreement.

In conclusion, Madam Chairman, I would again like to thank you for scheduling this hearing and giving ALPA the opportunity to express our views on this vital subject. It is my hope that we can soon resume our efforts to get to a legislative solution on this issue. We stand ready to work with you and your staff on this effort and would be happy to respond to any questions which you or the members of the committee may have.

Thank you very much.

Senator **Kassebaum**. Thank you very much.

You make a strong case, Captain O'Donnell—and it has been made before—for the importance of seniority integration to pilots in mergers or acquisitions. Yet, in the past and because this has been a major stumbling block in negotiations, whether to apply the seniority integration to route swaps and other transactions. We cannot seem to move beyond this as far as where there has been no consolidation of employment.

And I think that this is a major area of concern. How would you specifically address that?

Mr. **Tello**. Well, Madam Chairman, my name is Jim Tello. I am an attorney for ALPA and I think it is important to make distinctions here concerning these LPP's and the different purposes they serve in different contexts and different standards upon which they have been imposed in these different contexts.

We speak largely about mergers and acquisitions, which are the primary context in which these LPP's have been imposed, and there, as we have noted at some length, they serve a very definite purpose, both in facilitating those transactions and protecting the careers of people involved in those transactions, the employees in those transactions.

Other forms of transactions, like route transfers and suspension and replacement agreements and other such devices, have been the object of the exercise of discretion at the CAB, and we have always nevertheless had the opportunity, and the courts of appeal have required the CAB to provide us with that opportunity, to argue to them that labor protection should be imposed in a given transaction because of the extent of the harm on employees in that transaction, and also to argue to them that a certain kind of protection is appropriate.

Now, it is quite true that by and large the Board has not seen fit to impose seniority integration, but there have been occasions in which they have required the transfer of job rights. For example, I think this was referenced by Chairman McKinnon, the opportunity to have first right of employment by the successful carrier supplanting the original carrier. That is a form of job right transfer.

Whether you call that seniority integration or not, it is integration at the bottom of the seniority list. Now, you know, when you're talking about seniority integration as such, rather than in some specific form required by the CAB, the way in which the integration takes place under the LPP's is governed by the requirement that it be done in a fair and equitable manner, and that has created an elaborate case law as to what is fair to employees in a particular circumstance.

Now, it may well be that in a given transaction, that fairness will require only the transfer of minimal job rights, a right to be recalled, for example. In other circumstances, the equities of the situation, the jobs and job opportunities that the transferring employees might bring to the circumstances might require substantially different forms of integration or transfer of job rights.

I think that is by way of explanation. I think that the Board has—I want to summarize—transferred job rights in limited circumstances; in other circumstances it has not. In all circumstances we have the opportunity in which to have—continue to have the opportunity to argue that in particular factual circumstances should transfer as well as other LPP's be imposed.

Senator KASSEBAUM. Does not applying seniority integration, though, in a sale of equipment substantially limit the carrier's ability to make that sale? And I think this was brought out in the earlier panel, for example, in applying the 20-percent criteria which has been proposed. An airline acquiring three airplanes from Capitol which were just taken out of service would be required to take Capitol's crew as well.

Now, it seems to me there would be a problem there, that it would really simply mean these sales would not take place.

Mr. O'DONNELL. I think, Senator, I will give a short answer to it and let Jim Tello embellish it a little bit.

The abuses that have occurred in the past is the reason that the employee groups have reached out and tried to encompass the sale of assets. And the example I gave you that was a substantial abuse, where Texas International took *x* numbers of its aircraft, eight of its airplanes, and transferred them to New York Air, started a new operation up there at a time they were furloughing Texas International pilots, and it was done within the structure that Texas International had set up.

And what we are saying is that the job rights to that equipment that Texas International owned belonged to some extent to Texas International pilots, and the companies and the corporations should not be allowed to enter into transactions for the sole purpose of getting out from under these labor contracts or getting out from underneath obligations to their employees.

Mr. TELLO. I think that the chairman's comment was directed, as I understand it, at least in part toward the question of whether transactions are foreclosed that might otherwise have been available. First of all, I think that there are some unwarranted fears on the part of analysts who are looking at such transactions, because labor protective provisions, whether imposed or not—let us assume they are imposed in a given transaction—cannot be invoked and claims will not be paid unless harm to a particular employee can be tied directly to that transaction.

Take for example Braniff. We would have to find a specific harm to already furloughed employees tied to a given transaction in order to make out a claim. Now, I'm not sure exactly what kind of transaction Braniff has in mind that is going to harm furloughed employees who are already on the street, but I would like to hear what it might be.

These fears I think are, by and large, the result of ignorance in the manner in which these devices work. And second, to the extent that a transaction would be vital to the viability of a company, the Air Line Pilots Association has a long track record of making whatever concessions might be necessary to keep jobs and careers alive.

Senator KASSEBAUM. So, you do not really believe that seniority integration should be limited to where there is a work force consolidation?

Mr. TELLO. Seniority integration? Our position has been that we wish to be able to continue to ask for seniority integration in those transactions where it is warranted; and second, we wish to impress upon the committee our perception that seniority integration is not what it facially appears to be. It does not have to be the disruptive or costly process that carriers suggest that it is.

Last, but not least, if the company does not want seniority integration, again, for seniority integration to occur under the LPP's there has to be a proof that seniority is affected, section 3 of the standard LPP's, before any list integration can take place, whether or not the LPP's are imposed on the transaction.

Senator KASSEBAUM. Well, that brings up what seems to me to be an interesting point, and you have touched on it, Captain O'Donnell, in the number of cases that are still in litigation, where specific harm has to be proved, is that correct.

Mr. O'DONNELL. That is correct.

Senator KASSEBAUM. Would not the collective-bargaining process, where there has been a recognition on both sides of what would be involved, make far faster the realization and settlement of any negotiation, rather than this continuing challenge through litigation? And you mentioned the Pan Am-TWA route swap, where there is, I think, 5 years in which the arbiter was involved in trying to decide, and it seems to me if the collective-bargaining process were in effect, rather than locked into position where one has to prove specific harm and so forth, that it could be a far more productive agreement for both management and labor.

And let me say that I do not have any sympathy for executive LPP's, either. But I think that this should be a part of the bargaining process just as much as the rest of it as far as what could benefit, it seems to me, the overall health of the industry.

Mr. TELLO. You are talking about the compensatory provisions of the LPP rather than seniority, and if those had been incorporated in the collective bargaining agreement, the same forms of litigation—and this is really arbitration—would take place simply in a different form if there were a difference of view between the claimant and the company as to whether or not they would apply. These commonly turn on factual proof, and in the case of a contract arbitration would take place before a system board of adjustment, as opposed to an arbitration imposed by labor protective provisions under Allegheny-Mohawk.

So you still have the same potential for disagreements over the application of these provisions, whether they are done in collective bargaining or otherwise.

Senator KASSEBAUM. Except that, because they have not been imposed legislatively, you at least have an agreement that both sides have agreed to and I would not think would be challenged.

Mr. O'DONNELL. Even though they have been imposed legislatively, as they were, as is the case in Pan American-TWA, it still is 5 years later and a large number of employees have not been compensated yet. And Madam Chairman, I have negotiated with the airlines for 25 years, and they say they would like to submit the issue to collective bargaining. I can assure you, we will be sitting here 25 years from now still talking about a great number of those characters who have not reached agreement on the compensation side of it.

Senator KASSEBAUM. Do you feel there would be any benefit, and do you have any objection, to just extending the CAB authority to whatever other body, whether it would be Justice or Transportation, for say a period of 5 years, in which if we were not able to reach some agreement we could maintain that authority as it exists now after the termination of the CAB?

Mr. TELLO. First I guess we need a clarification. Are you talking about both seniority and the other procedural protections?

Senator KASSEBAUM. Just simply the same mechanism as exists presently.

Mr. TELLO. There is one problem involved there. We heard this morning, for example, that Chairman McKinnon is planning to use a route transfer case as a vehicle for determining whether labor protection should be imposed not only in route transfer cases, but also in mergers and acquisitions.

We, essentially, have an independent regulatory agency that is going about its business in the usual way and in accordance with its own philosophies, and we think that the Congress—it is about time that the Congress state its view in this area, state its view that labor protection should be continued to be imposed.

Now, there was one piece of legislation proposed, I believe, by Senators Cannon and Packwood, which would merely have continued jurisdiction in administrative agencies.

Senator KASSEBAUM. It would not have continued it, of course, in the same form as is in existence now in the conference report.

Mr. TELLO. Well, forgive me if I am in error, but as I recall the legislation merely stated that the Board would continue to impose labor protection in those classes of cases on which it previously imposed labor protection. So, it would simply be an assurance that the Board would not unilaterally exercise discretion in their view to shut off labor protection in all classes of cases. That is what we are concerned about.

Senator KASSEBAUM. Senator Riegle, welcome. Do you have some questions you would like to ask?

Senator RIEGLE. Yes; and I appreciate having the chance to do so now. As you know, we are in the process of attempting to work out a time agreement on the Senate floor on the banking bill, and as the ranking member of the minority side of that committee, we are trying very hard to get that up to date. So, it is the old problem of having to be two places at once.

But I do have some questions and let me cover them briefly. Captain O'Donnell, if section 408 remains in the FAA Act—and it probably will, since it sets the rules for mergers—and if labor protective provisions are included as a result of section 408, why do you feel it is necessary to codify these protections in law?

Mr. TELLO. Senator, I think this is for the same reason that or similar reasons that I just conveyed in response to Senator Kassebaum's question. We are concerned that the CAB is controlled by a philosophy which may result in their shutting off labor protection. They have been threatening to do so for several years now, notwithstanding that they continue to impose LPP's on mergers and acquisitions, and we are concerned that they may one of these days carry out their threat.

One evidence of that is the announcement this morning by Chairman McKinnon that they are going to use a route transfer case in order to determine potentially whether it is useful to continue labor protection even in mergers and acquisitions, or at least that was intimated. We view that with some alarm and we would certainly want the Congress to do what it can to continue these basic protections.

Senator RIEGLE. Let me ask you this question. It is my understanding that labor protective provisions were not really needed in a regulated environment, because merging airlines and their employees were protected by regulation at that time. Now, it appears that these provisions are needed in the deregulated environment, and it is proposed now that we take them away. And would you agree with that assessment?

Mr. TELLO. Senator, I believe that the traditional Allegheny-Mohawk labor protective provisions were needed in the regulated environment and are needed in a deregulated environment, because the structure of the Railway Labor Act and the structure of the labor-management relations in this country was not affected by that act.

The only mention in the deregulation act of the labor relations was the first explicit mention, that the CAB must consider the interests of airline employees when it decides the public interest. Apart from that, we are unaware of any change in the labor relations law or practice or custom affected by that statute.

Senator RIEGLE. But then I would take it that it would be your view that in a deregulated environment the problems that arise for employees are, if anything, considerably greater here?

Mr. TELLO. Yes, Senator, because of these innovative transactions we keep hearing about and the threats they imply.

Senator RIEGLE. I understand Senator Packwood has already asked these questions, but I would like to get your feeling on them as well, and that is, Do you think it is fair that management often gets the labor protective provisions and the severance pay in their contracts, and yet the same people who get those protections are opposing that those protections be extended to their employees?

Mr. O'DONNELL. Yes; we think it is rather odd and strange. In fact, this morning Mr. Putnam made the comment that the agreements that were reached with the Braniff management people before the company went bankrupt were negotiated by the managers. I love that process where you negotiate with yourself. I could be very successful in that arena. But I have trouble doing it across the bargaining table with the same managers.

And as I stated in my opening statement here, that we have a case, the Pan American-National merger, where the Pan American and National provided up to $375,000 or 3 years' full salary for some of their senior management people, at the same time objecting strenuously to the provision of labor protection and compensation for the regular employees.

Senator RIEGLE. It is my understanding for the last decade these provisions have actually been requested by the airlines and that in only one instance have any monetary payments been made under these rules. And I am just wondering, then, how can these provisions be such a terrible burden for the airlines, given that history?

Mr. O'DONNELL. I think the airlines see this as an opportunity. All of the agreements that we have reached on the mergers that have taken place in the last 10 years, the airlines, because of the concern of labor disruption and strikes and just types of unusual disruptions, let's say, between the different employee groups, they have been willing to enter into the standard labor protective provisions.

They see an opportunity here now, because of the the Deregulation Act, that perhaps there is a sense in Congress to terminate the long historical Allegheny-Mohawk labor protective provisions. I see a different story. I think the air transportation in this country is still vital. It is vital to the commerce of this country. And I see that each of the airlines—and it will be some of the stronger carriers at some point in the future—will start to come up with these innovative ideas, to come up with transactions that are at the expense of the employees.

And we will see disruptions in the future. We will see strife and strikes, because the employees at some point in time will say, no more, and an airline will enter into some unusual agreement at the expense of the employees and we will have strikes.

And I think Allegheny-Mohawk has demonstrated that it prevents disruptions in air commerce, and that is what we have preached. As you know, Senator, we have preached for a long time that their gain is very little to the employees. The only thing it does is, it provides a process for us to resolve the disputes as to the integration of the two different work forces.

That is a major piece of it, and then if there are carriers such as the Pan American-TWA situation—and I heard Ed Meyer say today that it cost him about $2 million in employee protection, but if I recall correctly it was about $23 million of profit made by TWA during that period of time, and $2 million for the protected employees is not too high a price to pay when a man receives a chance or an opportunity to improve their bottom line by not taking care of those employees that are adversely affected by it.

Senator RIEGLE. Well, I think these are important observations and I may have some other questions for the record.

Senator KASSEBAUM. I would just like to say that certainly I am concerned about how one does go about protecting those who are in jeopardy of losing jobs. Right now, certainly, I am concerned, because in Wichita, Kans., we are losing a lot of workers in the aviation industry and throughout.

We should all be concerned about the toll that the recession has taken. I have a lot of farmers who are losing their farms as well, and I just do not know how we sort through the fair and equitable way to help solve these particular problems and provide some protection for those losing jobs, and yet are we also placing restrictions that keep the industry itself from being as strong and healthy as it might be?

I would like your response, for instance, to Braniff's allegation that in the route swap of Braniff-Pan Am and Eastern and Braniff that they simply, given the financial conditions they are facing, will not be able to do it if they have to meet a mandated LPP?

Mr. TELLO. Senator, I think one of the answers to that is that this issue of whether labor protection should be imposed is currently being considered by the Civil Aeronautics Board, and we are satisfied that we will be able to present to the Civil Aeronautics Board our view of the facts and the equities in this set of circumstances; and that in our view labor protection should be imposed and is appropriate and equitable and would not have the effect of making the transaction a nullity.

After all, the companies involved in the transaction can waive any objection they wish. If Eastern wants to keep those routes, then presumably they have the option, if LPP's are imposed, of accepting the LPP's and waiving that objection.

So, their statement in their agreement that they will not accept LPP's is essentially a statement of position. And we are not asking today that the Congress necessarily say that in any transaction LPP's should be imposed, but that we continue to have the opportunity to persuade somebody that they ought to be imposed in a particular situation.

Mr. O'DONNELL. Senator, if I may, the point here is that in the Allegheny-Mohawk process, when the two parties of pilots, and frequently the third party is the airline company, but we try to resolve the differences between the two pilot groups and resolve it through negotiations between ourselves and between the two pilot groups. At that point in time we try to do it through mediation. If we are unsuccessful in doing that, the Allegheny-Mohawk and the ALPA's merger process provides for arbitration and it prevents a labor dispute.

Well, the same situation would occur here with this route swap. We do not know what the outcome would be. Very simply, we know an arbitrator would look at the impact it would have both on Braniff and on Eastern Airlines.

And before I lose the opportunity, I stated in my statement that even though I was rather upset last August by some of the editorials appearing in newspapers and the tremendous, gross distortions by the editors that were being put in there by the airline companies of the tremendous costs of the LPP's—and they were talking about millions of dollars.

And I happened to have an opportunity to scan Paul Ignatius', the chairman of the ATA, statement this morning, and it is a continuation of these gross distortions. I think that upsets me and it upsets the members I represent, that the ATA comes in here as supposedly a respected organization and submits facts to the Congressional Record that are distortions and in fact incorrect.

In their statement they say that the pilot compensation, indicating that airline pilots in 1981 earned an average compensation of $91,000 for 44.7 hours of work. I would like, with your permission, to insert in the record the actual W-2 figures for all airline pilots last year, which shows the average pilot last year making $68,926. That is a substantial reduction from the $91,000 that is indicated by the ATA.

They also said that the most senior pilots, of course, earn substantially more than this, with a B-747 senior captain earning more than $157,000 a year. There may be a pilot out there making $150,000, and there may be a half a dozen, but you will find most of them are management pilots who get an override from their company for being management.

The average 747 captain pay last year paid all airline pilots in this country that we represent was $118,560. It is these distortions that the ATA continues to put out, trying to destroy the credibility of the people that they represent as well as I represent. And with your permission, Madam Chairman, I would like to put that in the record.

Senator KASSEBAUM. That will go in the record.

I have no further questions other than to say that I think it is a very important issue before us. I do not think anyone questions the problem that we face in this, and particularly when the economic conditions are the way that they are today. So, I appreciate your testimony and hope that we will be able to find a solution that is going to be beneficial to the country and to the traveling airline—the air traveling public, which is really what ultimately would be to the benefit of both the labor and management groups.

Mr. O'DONNELL. Senator, thank you very much for this opportunity.

I want to say this: That we recognize that something is going to have to be done, and we stand prepared to work with you, your staff, and the rest of the committee in a cooperative way to come up with some solution that responds to the needs of everybody.

Senator KASSEBAUM. Thank you.

Mr. O'DONNELL. Thank you very much.

[The statement and material referred to follow:]

STATEMENT OF JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Good morning, Madam Chairman and members of the Subcommittee. I am John J. O'Donnell, President of the Air Line Pilots Association (ALPA), which represents the professional interests of 33,000 air line pilots. With me is Arthur Brennan, ALPA's Director of Representation, and James Tello, an ALPA attorney who frequently represents our members' interests in Civil Aeronautics Board proceedings.

We are pleased to have this opportunity to testify in support of legislation which would continue the CAB's 30-year practice of imposing labor protective conditions on its approval of mergers, acquisitions, route transfers and similar substantial transactions. These LPPs provide a procedural framework for integration of workforces, and procedural and financial protections for the livelihood and careers of airline employees during such difficult transition periods. These traditional protections, known as Allegheny-Mohawk labor protective provisions ("LPPs") have become an integral part of the fabric of labor law governing such airline transactions. Allegheny-Mohawk LPPs have contributed greatly to the unique record of labor peace experienced in this vital transportation industry during these typically volatile periods for airline workforces.

In our testimony, we will describe the Allegheny-Mohawk LPPs, the kinds of transactions to which they have been applied and could be applied under the present regulatory system, and will show the Committee why perpetuation of Allegheny-Mohawk LPPs is sound law and policy for the airline industry and for those workers, business travelers, shippers and other consumers who depend on that national transportation system in a number of important ways.

The labor protective provisions ("LPPs") imposed by the CAB have evolved over the years. However, the formula has remained essentially stable since last revised by the Board in the 1972 Allegheny-Mohawk merger case.

The "Allegheny-Mohawk" LPPs, have basically two kinds of devices to ease workforce integration in airline mergers and acquisitions, one to obtain integration and rearrangement of the employees, and the other to compensate those workers harmed by that process.

Standard LPPs provide a vehicle to integrate the seniority systems of the carriers involved and smoothly settle any other problems stemming from the rearrangement of employees as a result of the merger or acquisition. These procedures anticipate negotiated, voluntary solutions but are backed up with mandatory arbitration.

The second part of the LPPs involve limited payments by the airlines involved to adversely affected employees. These payments help ease the financial burden of the merger or acquisition when it falls hardest on an individual. While actual payments by carriers in mergers and acquisitions have remained very limited in actual experience, the availability of these payments is widely viewed by employees as a safety-net to serve them through a difficult period. The result has been a hard-to-measure but real diminution of labor unrest during such periods. There have been no airline merger-related work stoppages in memory.

The benefits themselves are modest. For example, there is protection against the result of "bump-downs" on the seniority ladder, with attendant lower pay as a result of merger rearrangements. This "displacement allowance" only applies to employees who are moved to a lower paying position within a three year period after the merger is effective. Frequently, however, generally rising pay schedules limit the period for which such diminished pay must be compensated.

The LPPs provide a "dismissal allowance" for employees losing their jobs as a result of the merger. This allowance is equal to 60 percent of their average monthly earnings over the previous 12 months ranging from 6 months for an employee with one or two years of service, up to a maximum of 60 months for employees with over 15 years of service. Of course, these benefits are off-set if the employee obtains a new job, etc. An optional, limited lump sum is also offered with reduced total benefits.

The LPPs continue hospitalization and other similar benefits to affected employees. They compensate employees who are retained by the airline but forced to move. (Frequently, union represented employees already have a contract which covers these expenses). They protect affected employees from distress-sales of their home (not lower market prices from unrelated causes.)

The LPPs also protect against a carriers' manipulation of work-forces in anticipation of the merger or acquisition so as to avoid the applicability of LPPs. In practice, this provision avoids the suspicion that such manipulation has occurred, because it would be fruitless. Similarly, another section of the LPPs prohibits the carrier from requiring an employee to forfeit his eligibility for benefits under the LPPs if he or she does not wish to accept a job in a different field of endeavor (e.g., offering a reservation agent a job as a janitor).

In one way, the two kinds of LPPs interrelate, for when seniority rights are integrated in a fair and equitable way, both the burdens and the opportunities produced by the transaction are spread evenly. The even distribution will normally tend to reduce the dismissals, displacements and transfers caused by the transaction, which may be compensable under the LPPs. The companies involved are also thereby provided a powerful incentive to plan for integration of workforces in a way which minimizes harm to their employees.

As noted, all these devices are backed with mandatory arbitration and the Civil Aeronautics Board has heretofore strictly enforced that duty to arbitrate.

When requested, LPPs have been imposed in every merger and acquisition involving two certificated air carriers for the last 30 or more years. It is in this kind of transaction that LPPs serve their most centrally important function, and it therefore should come as no surprise that the need for such LPPs has traditionally been presumed at the CAB without the requirement of any further showing. The deregulation-era CAB's suggestions to the contrary in the National Acquisition Cases and in other cases which follow, are erroneous dicta which we hope will be finally put to rest in new legislation being considered by this Committee. The Board has nevertheless continued to impose LPPs with the agreement of the carriers involved, as had been the case in the overwhelming majority of cases prior to deregulation.

In addition to two-carrier mergers and acquisitions—the core of LPP coverage—the CAB has imposed LPPs on a number of other kinds of transactions where they appeared to be needed. The most prominent of these remaining classes of transaction concern "route transfers." Route transfers are essentially the sale or lease of a recognizably self-contained portion of an airline's business, together with its government-awarded franchise.

Unlike mergers and acquisitions, the Board has not imposed LPPs automatically in route transfer cases. Instead the Board traditionally had exercised discretion in such cases based upon the record presented to it—based on its judgment that the individual factual circumstances warranted that relief. The Board frequently modified or tailored the LPPs to fit the transaction's particular situation.

It should be recognized that under the present regulatory scheme LPPs are, formally speaking, "conditions" imposed upon approval of a transaction which the government must approve before it can be consummated. Such conditions, generically, are responses to a showing that one element of the "public interest" or of the "public convenience and necessity" will not be satisfied if the government approves the transaction without protective provisions to leaven its impact. Thus, under leading appeals court decisions, the Board has been required to consider, on the basis of the individual facts of record, the impact of many kinds of transactions upon the employees of the airlines involved. The Airline Deregulation Act of 1978 underscored that requirement by making it explicit in Section 102(a)(3) that "fair wages and equitable working conditions" are to be considered whenever the Board must weigh the public interest or the public convenience and necessity in any regulatory decision having impact on employees.

Accordingly, such transactions as suspension-replacements, capacity-reduction agreements, etc., have been considered for LPPs. Some requests for LPPs have been granted and some have not. But the present scheme requires the Board to consider the circumstances of each case on its own individuated facts as presented by the record before it.

We stress the Committee the differing nature of the various classes of cases on which LPPs have been imposed and have been considered. For mergers and acquisitions, LPPs have been imposed almost without exception. Other transactions have been the object of discretion.

One of the most persistent myths about Allegheny-Mohawk LPPs concerns the allegedly high costs which have been associated with them. Our research has disclosed only one transaction in history which actually resulted in substantial payments under the benefit provisions. That was the Pam Am-TWA route swap in 1975.

Our best information is that four sets of payments have been made in connection with that transaction. TWA pilots were paid a total of $1,492,610 of which the highest individual payment was $14,411 and the lowest $7 (exclusive of small additional pension payments concerning which we have no individual breakdown). The average was $6,352. Pam Am pilots were paid a total of $4,212. We are advised by counsel representing Pan Am flight engineers that only 6 or 7 have yet settled with the company, for a total of approximately $40,000. The remainder of the claims are still being contested by the company. Our only information on these claims is that the amounts will vary widely depending on the outcome of still-contested issues. Finally, we are advised that employees represented by the IAM received payments totaling $456,000 from the PAA-TWA route swap.

In light of assertions made in an earlier ATA press release, an earnest attempt was made to determine whether there were any claim payments resulting from the Allegheny-Mohawk merger. To our knowledge no pilot dismissal or displacement claims were paid. If there were any carrier claim costs—and we are not aware of them—they must be limited to relocation and moving expenses. Similarly, there have been a certain amount of claims paid in connection with moving and relocation expenses in the North Central-Southern and Republic-Hughes Airwest mergers. However, we do not know precisely what those amounts are and have no information on what portion may have been required to be paid by contract anyway.

It may be of interest to the Committee that the CAB once attempted an analysis of LPP costs associated with recent mergers and acquisitions. The Board in the *Texas International-Continental* case went so far as to send detailed interrogatories to companies experiencing recent mergers and acquisitions. Answers to those interrogatories demonstrated amply that costs associated with LPPs have not been significant.

The Board's investigation was mooted when the applicant later changed its position on LPPs, but the Board preserved the interrogatories and their answers in a separate docket. We will be happy to make copies of that material available to the Committee on request.

In general, when considering total cost figures suggested for LPPs, some prudent skepticism is in order. We suspect that some of the inflated figures we have seen must—if justified at all—include such things as payments made to management employees, or costs associated with the merger which have no relation to LPPs. (Coverage of management employees is not necessary. They normally have ample contractual protection in such transactions.)

Some recent mergers, notably the Pan-Am-National merger, have experienced great difficulties in work-force integration. A leap of logic is commonly made to attribute those difficulties to the LPPs attached to approval of that merger. On the contrary, the difficulties experienced in mergers like PAA-NAL would be greatly exaggerated if LPPs had not been available. Indeed Pan American itself resorted to mandatory arbitration under the LPPs to achieve integration of its flight attendant lists when no other method worked.

The difficulties experienced by Pan Am in workforce integration were intrinsic to the heterogeneous character of the two workforces Pan Am sought to combine. Not only was this obvious and predictable, but indeed the pertinent facts were spread extensively on the record at the CAB before the merger was approved.

The seniority protection afforded by the LPPs is of great significance to the pilots we represent.

While the principle of seniority may be important to all employees, it has special force among pilots. Nearly all pilot jobs on CAB-regulated carriers are governed by strict seniority systems. These seniority systems have evolved from the very beginning of the industry. They determine every important element of a pilot's career. Seniority number governs not only a pilot's compensation, but also the type and size of aircraft he will fly; his rank (captain, first officer, second officer—or flight engineer); his domicile (and thereby, perhaps, where he lives); and even whether he will fly during the day or at night.

It may also determine whether he works as an airline pilot at all. A pilot with a low seniority will be furloughed first and recalled last. Unlike other professions, a pilot cannot hope to progress in his profession by changing employers. At every job change, he must start at the bottom of the seniority list, and thus at the lowest professional and monetary rank.

Employment at those lowest ranks may be tenuous indeed. A typical pilot's career may start with military flying, followed by a stint with an air taxi, a fixed base operator or a private business. Once hired and trained by an airline, he still may experience substantial periods of furlough, through economic and seasonal cycles. During those periods he may be excluded from the industry because the price of being hired at another airline often includes an agreement to abandon his seniority number and recall rights at his former employer.

It is also significant that pilots typically cannot obtain new employment at all with an airline past the age of about 35, since air carriers often refuse to consider new hires over that age. The average age of ALPA's membership is 43 years, and the second officers—the least senior rank and most likely to receive LPP benefits—have an average age of 38 years and the employment skills of pilots are highly specialized and not easily transferable.

It is for these reasons that pilots feel so strongly about the seniority protections afforded by Allegheny-Mohawk LPPs.

Collective bargaining is not a satisfactory substitution for government imposed LPPs.

A distinction must be made here between the procedural protections of the Allegheny-Mohawk LPPs (Sections 3 and 11) on one hand, and the compensatory protections on the other. The compensatory LPPs can be negotiated and the procedural protections cannot.

The desirability of government imposed compensatory protection stems largely from the practical difficulties of negotiating such provisions during a period of emotional upheaval which typically pervades a merger.

The presence of an imposed formula as a floor will nearly always remove this question as an additional point of labor-management conflict. (Employees under those circumstances will not usually press for more, and management is on strong grounds to resist.)

The procedural protection cannot, however, be satisfactorily negotiated. No one has explained how one can negotiate in advance with carrier "A" for seniority protection and integration with the employees of carrier "B" which you do not represent, and where carrier "B" may be the surviving carrier in the merger. (Carrier "B" may have its own separate and different contracts). That is the job done by Sections 3 and 13 of the standard LPPs, requiring fair and equitable seniority integration backed by mandatory arbitration. Similarly, the mandatory arbitration of contract matters affected by the merger is available under Sections 11 and 13 of the standard LPPs and not otherwise.

Lastly, the CAB has provided a uniform reviewing and enforcing forum, which, while far from speedy, has provided in its decisions a sound and consistent framework in which the negotiation and arbitration devices of the LPPs have functioned.

We have recently heard a few management voices raised by those whose professed concern is that companies will be allowed to fail if LPPs are continued to be imposed. This is not so. It defies both logic and history to suggest that employee groups would not negotiate limitations on benefit levels if that is what it took to keep their company going, and their careers alive. (It's also difficult to collect LPP claims from a bankrupt company.)

In our view, LPPs do not protect jobs, but protect careers. There is a big difference. Older pilots dropped by a failed company, must start all over at the bottom of their new company's seniority list, if they can get a job in the industry at all. A few dollars of support, while important in less-than-extreme situations as a bridge over dislocations caused by mergers, are much less important to a pilot than the preservation of their company and thus their careers.

The massive concessions negotiated in the industry the last few years are strong evidence that employees will take strong action when necessary.

If such assurances are not enough, ALPA could also support any other device which makes availability of benefits subject to a decision of a neutral forum in extreme situations—but we could not support a bill which would deprive employees of seniority and other Allegheny-Mohawk procedural protections without their agreement.

Passage of the Airline Deregulation Act neither required nor presaged elimination of LPPs.

The first and most important point to make about the Airline Deregulation Act is that it did not purport to affect labor management relations as it had existed prior to passage, with one important exception. Section 102(a)(3) of the Federal Aviation Act, as amended by the Deregulation Act, made explicit for the first time that the CAB must consider the interests of airline employees as an element of the public interest or the public convenience and necessity. The Deregulation Act did not purport to change the Railway Labor Act, nor the central policy premise of the Railway Labor Act that airlines and railroads are key to this nation's commerce, and that interruptions to the vital service they provide must remain as minimal as possible. It is for that reason that the labor relations in the air and rail industries are the only ones governed by the Railway Labor Act, with its emphasis on protracted mediation and the status quo. Those statutory policies are sound, and the RLA's devices to achieve those policy goals may work well in normal collective bargaining contexts. However, in the context of a merger or acquisition, a different device is needed to achieve the same ends. That device, used in both air and rail industries for decades, are labor protective provisions backed by mandatory arbitration. Without LPPs, normal RLA processes will mean that after protracted negotiations over seniority integration and pay protections, and contract integration, the companies and employee representatives will not face quick and final peaceful resolutions of their differences through mandatory arbitration, but, rather, the potential of a strike. It is also noteworthy that merging companies are often highly leveraged as a result of the costs of take-over battles and management buy-outs. Is it sound policy to require labor and management to confront the difficult labor-management problems associated with merger, with only economic warfare as a tool for ultimate decision on unresolvable differences?

The question of what legislative solutions may be appropriate to address the situation caused by the upcoming transfer of CAB merger jurisdiction has already received considerable attention in both Houses of Congress.

In the House of Representatives, several members of the House Public Works and Transportation Committee sponsored the Civil Aeronautics Board Sunset Act of 1981, which would have continued Allegheny-Mohawk LPPs. Representative Howard sponsored a separate bill which would also have accomplished that purpose and Representative Mineta recently sponsored an amendment to the War Risk Insurance Bill which would have preserved these protections.

In the Senate, the Chairman and ranking minority member of this Committee, Senators Packwood and Cannon have sponsored serious legislative efforts to address this issue, as has Senator Kennedy. Indeed, Chairman Kassebaum has made several proposals and is the author of the language now in the War Risk Bill preserving domestic merger and acquisition authority at the CAB for two years so that that agency may continue to impose LPPs while the investigation this Subcommittee is engaged in, may proceed in a thorough fashion.

The Department of Transportation and even the ATA have, at one time or another offered their own efforts to resolve this issue.

We appreciate all of these initiatives, and would welcome more. If the Committee would find it helpful ALPA will be happy to contribute to the drafting effort in hopes that a formula may be found which satisfies most reasonable objections but which provides the basic, enforceable protection needed by airline employees as they face these turbulent times for the industry to which they have dedicated their careers.

Thank you for this opportunity to present our views. We look forward to working with you for a stronger, healthier airline industry.

AIR LINE PILOTS ASSOCIATION FREQUENCY DISTRIBUTION SUMMARY (CALENDAR YEAR 1981)

Membership and airline type	Average age	Number of members	Average earnings	Average years of service
ALPA active membership	42.98	30,972	$68,926	15.6
Captain	48.54	12,047	90,588	21.9
First officer	40.31	11,125	61,133	12.5
Second officer	38.19	7,800	46,586	10.1
Majors	43.30	26,455	71,004	16.1
Captain	49.03	9,981	94,079	22.6
First officer	41.03	9,268	64,594	13.5
Second officer	38.27	7,206	47,288	10.3
B-707 (all)	45.27	850	70,713	18.7
Captain	49.72	279	91,355	23.6
First officer	43.30	260	66,058	16.6
Second officer	42.92	311	56,086	16.1
B-720 (all)	60.00	1	38,509	32.0
Captain	60.00	1	38,509	32.0
B-727 (all)	41.45	12,513	64,325	14.0
Captain	47.38	4,378	89,566	20.8
First officer	40.62	3,962	60,638	13.0
Second officer	36.02	4,173	41,344	7.9
B-737 (all)	40.41	996	56,560	12.9
Captain	46.53	311	83,953	20.0
First officer	42.13	324	59,454	14.8
Second officer	33.60	361	30,365	5.0
B-747 (all)	50.59	1,766	95,918	23.7
Captain	54.26	689	118,560	28.8
First officer	46.23	782	85,908	18.2
Second officer	53.59	295	69,567	26.6
CV-580 (all)	33.14	132	48,325	5.9
Captain	36.06	70	62,845	8.6
First officer	29.85	62	31,932	2.9

Senator KASSEBAUM. The next witness is Mr. Donald Burr, chairman and chief executive officer, People Express. Welcome, Mr. Burr. And I am sorry, there is another vote that has now been called. I regret that this may go on most of the morning, but I think we will go ahead if you do not mind and start your testimony.

STATEMENT OF DONALD BURR, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, PEOPLE EXPRESS

Mr. BURR. Thank you. I appreciate having this opportunity to discuss with you what is a very important matter, and I commend you for having these hearings.

We, too, have a detailed written presentation, which I would like to commend to the record.

Senator KASSEBAUM. It will be included in the record in full.

Mr. BURR. Rather than reviewing that presentation, what I would like to do is to talk briefly about People Express Airlines. I think People Express Airlines is perhaps a relatively good example of the vision that Congress had in mind in 1978. I think that example is also relevant to the issues that are under discussion.

I will not attempt to go into any great detail on the public policy issues and the economic issues. I think other people here this morning have described those in great detail and well. I would simply say that we are very fundamentally and powerfully philosophically opposed to Government interference in the private economic process.

People Express and its recent record, which I would like to review with you very quickly, I think, is a terrific example of what can be achieved in the marketplace when there is not Government interference in the process. People Express has been flying for just a little over 18 months. During that period of time, it has raised in excess of $130 million in new capital in an industry that is in a very difficult condition. And in fact it was just a month ago that Morgan, Stanley, which is a preeminent investment bank in Wall Street known for its relationships with major companies such as AT&T and IBM, undertook to raise another $30 million for People Express, even in the midst of the economic recession and the airline traffic recession and the effects of PATCO and so forth.

With that kind of support, we have in the last 18 months hired in excess of 1,000 people in the Newark, N.J., area. There are over another thousand people who are indirectly on our payroll, that are servicing our activities at the airport, and we are currently hiring 500 more people.

Those people are now generating revenues at a rate that is close to $200 million a year. We have 20 aircraft and serve 13 cities. So in the space of just 18 months we have been able to put together an airline that is really no longer one of the smallest. It was in the second quarter of this year as well the third—it had the third highest rate of return on revenues. In other words, it was a very successful and profitable operation.

So we have hired a great many people. We are continuing to hire as rapidly as we can, and we think that there would have been no way that we could have accomplished that kind of hiring record were it not for the fact that we were largely unfettered and that we were able to choose our equipment, our routes, our people, our marketing programs, with relatively little interference in the process, and were able to structure a relatively large company in a very short period of time.

We do not see that ending. In fact, we see it accelerating, because there are now literally dozens of new airline proposals around the country, many of whom talk about doing much the same thing that we have done in their business prospectuses where they talk to their potential investors.

We think that this is the way to protect employees, that is by developing vibrant, successful entities that are able to hire a great many people. We think we have proven that that is eminently possible, because we have done it in the worst airline conditions in modern times.

We have not done it, on the other hand, by hiring people at poor rates or whatever. Our people are all stockholders in People Express. The average employee at People Express owns 23,000 dollars' worth of People Express stock, and that figure does not include the stock of the founders of that company.

The people at that company, in our company, have two forms of profit sharing as well as a base salary, and which enables a pilot, for example, in his second year of employment at People Express to earn $45,000 a year. Our typical flight attendant—we do not call them that. We call them—they are customer service managers, because they are involved not only in flight attendant duties, but they also work a month in ground operations and in staff work and in accounting and training and crewing and so forth.

In their second year they earn between $20,000 and $25,000, depending on their profit-sharing results.

So we have not achieved this record of growth and profit at the expense of the people who work in our company.

I would like to finally provide two examples of how the proposed so-called protection provisions, which we think in fact would be contrary to the interest of airline employees, ironically, how they have in fact affected People Express recently.

About 2 weeks ago we signed a contract with Canadian Pacific Airlines to buy three of their 737-200's. We were—leading up to the negotiation of that contract—we were in discussions with three separate domestic carriers, all of whom badly needed to sell their equipment to raise the cash to meet their payroll. One of the reasons and factors that we went outside the country to buy our three aircraft was due to the fact that we may have had to take on some responsibility for the people at those carriers.

Currently we are involved in another transaction which has to do with a large—well, it has to do with a simulator. Simulators are very expensive devices to train people without flying around in aircraft. That is a similar case, where we will probably not buy a domestic simulator for the same reason.

In summary, it is our belief that People Express exemplifies the vision that was embodied in the 1978 act. We have done I think very closely what Congress had in mind. We have only been able to do it because we could apply the resources as necessary, whether it be planes, routes or people. We think that is the correct way to protect employees and protect their future. We are very much intent on that, and we think that we heartily agree and philosophically agree with the contention that has been made here this morning repeatedly, that this is not a proper arena for Government activity.

Senator KASSEBAUM. Thank you very much, Mr. Burr.

I am sorry, I am going to have to go vote before I ask any questions. If you do not mind waiting for just a few moments.

Mr. BURR. That would be fine.

[Recess.]

Senator KASSEBAUM. Mr. Burr, People Express certainly has an innovative approach to labor negotiations and management. You mentioned that the employees were stockholders in the company. Is this an option that the employees have or is this a condition of employment?

Mr. BURR. It is a condition of employment for our people. We make it very clear to them in the interviewing process that one of the requirements of joining People Express is that they buy some stock in the company, and for the CSM's [customer service managers], that requirement is 100 shares, and for the pilots the requirement is 200 or 300 shares. I cannot quite remember.

They then have the further ability to acquire. The reason I get up this high as $23,000—and in fact, a great many of our captains own between 50,000 and 100,000 dollars' worth of stock. The reason they get that high is not because of a mandatory requirement. There are further voluntary awards or grants made available to them should they wish to participate further, and a number of them—well, most of them have exercised those grants.

And so they keep accumulating stock over time. Every 6 months we have a general grant in the company of about 500 shares, and they can buy 100 shares or 200 or 300, 400, whatever they choose to, and then we make it available on a payroll deduction plan so that they do not have to purchase that stock all at one time.

Senator KASSEBAUM. Do you have large attendance at stockholder meetings?

Mr. BURR. Yes. We just had one and we had a very large attendance.

Senator KASSEBAUM. With questioning on the part of the stockholders and the management of the company?

Mr. BURR. Yes, that is right.

Senator KASSEBAUM. Do you think it would be possible for carriers who have the traditional and longstanding traditional relationships to ever change to a more innovative approach, or has this been possible largely because you were small and you started in this direction? Do you see this ever working where the more traditional approaches have been in existence?

Mr. **Burr**. I think the general concepts can clearly be applied in all other companies. Each one would be different in specifics and detail because there are histories of relationships, there are various contracts and agreements, and so there is a lot of history that you have to contend with.

But any company has history. We had history after a month. And so you have to frame and size the concepts to the unique situation that they are involved in.

But having employees involved in sharing the profits of the company or having employees involved in the ownership, the actual ownership of the company, having employees involved in the advisory councils that we have at People Express, the coordinating council which I sit on with the CSM's and the pilots—those are all concepts that are available to other companies easily.

In fact, quite a number of business schools are studying our company at this time. Harvard and Yale and Syracuse and a couple of others have people on our premises who study these concepts with an eye to writing cases about them for distribution in business classes, so that other people can learn of the way we apply it.

Senator **Kassebaum**. Do you attribute the stockholder, the employee stockholder arrangement, to be the key to your expansion and success?

Mr. **Burr**. No. A stock plan or a profitsharing plan in and of itself alone does relatively little. It is the overall fabric of the company, and that is held together by a communications chain. It does not do very much good for people to own some stock or to get some profit sharing if they do not understand the rationale for why it makes sense, why it is in their interest, why it is in the entity's interest.

People have a lot of questions about that. Some of our people question whether or not profit sharing is in their interest, because they would rather have a different form of compensation. So we have elaborate communications sessions on a routine basis, where we can encourage questioning and where a lot of questioning and answers goes on.

It is the whole coordination, communication process internally that makes all the little pieces fit together in a whole and so that the direction of the company is straightforward and everybody understands and everybody is going in the same direction.

Senator **Kassebaum**. Do you believe that the imposition of mandatory LPP's would seriously affect the outcome of collective bargaining?

Mr. **Burr**. I think that, yes.

Senator **Kassebaum**. I like straightforward answers. Good.

Would the LPP requirement present a major obstacle, for instance, for People Express if it wanted to merge with another carrier?

Mr. **Burr**. Yes. We would not want to merge, but it would.

Senator **Kassebaum**. But this would, you feel, be a consideration that would be detrimental in any consideration for an airline merger, basing it on your own circumstances?

Mr. **Burr**. Yes, definitely.

Senator **Kassebaum**. Thank you very much. I appreciate your testimony and the challenge that you have before you certainly I think can be an inspiration to others.

Mr. **Burr**. Thank you very much.

[The statement follows:]

STATEMENT OF DONALD C. BURR, CHAIRMAN OF THE BOARD AND PRESIDENT, PEOPLE EXPRESS AIRLINES, INC.

Madam Chairman and Member of the Committee: My name is Donald C. Burr. I am the Chairman and President of People Express Airlines. I appreciate having this opportunity to address the question of whether Congress should mandate labor protective provisions in the airline industry. This issue is extremely important because, in my view, if LPP's are enacted it will have a substantial negative impact on the airline industry—and by "industry" I mean both the employee work force and the air carriers. LPP's will adversely effect employment opportunities by constaining the ability of airlines to grow and prosper in a deregulated environment. The issue is important for another reason because its enactment will send a clear message that Congress has lost faith with and is prepared to retreat from its deregulation policy.

You are to be commended for holding these hearings because, at last, they provide an opportunity for a full airing of this important issue. In the end, this issue should be decided on the basis of whether the legislation serves the national interest, not the interests of one group or another.

As I see it, LPP's will not serve the national interest because they will reduce airline employment opportunities by stagnating growth and preventing carriers from taking actions that may be critical to their survival. Furthermore, their enactment would represent a major step backward from the policy of minimizing government regulation of business which was so firmly implanted in this industry by the passage of the Airline Deregulation Act.

For the sake of the future of this industry and its employees I urge this Subcommittee to say "no" to mandatory LPP's.

Before I discuss the reasons for my strong opposition to LPP's, I would like, first, to tell the Committee what People Express is, what it stands for, how we got where we are today, and where we expect to go tomorrow. I believe this is a good framework for discussing LPP's because it deals with the issue on practical rather than theoretical terms.

People Express is, perhaps, the largest, fastest-growing offspring of airline deregulation. We started operations in April 1981 and have grown to over $120 million in assets, over 1,000 employees, and a fleet of 17 B-737 aircraft serving 12 cities. All this in just under a year and one-half—a record of which all of us at People Express are justifiably proud.

People Express' mission and hallmark is to provide safe and efficient scheduled air transportation at the lowest cost to the traveling public. With fares that make flying cheaper than driving, People Express is not just competing with incumbent carriers for a share of the existing market—it is bringing into the market new passengers who would otherwise not be flying. In short, we are expanding existing passenger markets and creating brand new ones to our benefit, to the benefit of our competitors, to the benefit of the traveling public, and to the benefit of labor—we are creating jobs.

There is no secret to our success. We simply strive for and have achieved the lowest costs of any airline in the country. At about five cents per seat mile we can afford to offer reliable, high frequency jet service at rock-bottom prices and still make money for our employees and shareholders. People Express is able to achieve these cost efficiencies first and foremost because of the unique way in which we integrate all of our employees as managers and owners of the company, and because of the method of our operation and the type of and manner in which we use our aircraft. Let me explain.

People Express believes that its long-term success is dependent on the attitude and commitment of our employees. The name "People Express" signifies our commitment to "people"—both to the traveling public and to our own employees. People Express is able consistently to offer the lowest fares in the industry and still make a profit because of the dedication, productivity and high morale of our employees.

We strive every minute, every hour, every day to create an environment which provides for the maximum involvement of every one of our people in the management and operation of the Company. We have no rigid job classifications and employ a relatively horizontal management structure. Each of our employees is a member of management, each performs several important staff and line functions, and each is given training and responsibility in several different areas of the business. In addition, we have created internal structures to keep our people fully informed of decisions and matters affecting the business of the Company and to maintain open communications among all levels. This combination of management policies promotes an atmosphere of self-management and dedication to the Company.

For example, customer service representatives (flight attendants), when not on flight duty, work in reservations, or at the check-in gates or in the accounting or personnel departments or wherever their talents can best be utilized. Similarly, when they are not flying, our flight managers (pilots) actually establish their own flight-duty schedules or work in aircraft scheduling, or marketing, or public relations, or flight training. In this way, each People Express employee is utilized in a variety of areas of our business. This structure helps ensure that everyone in the company shares in, and is committed to, a unity of purpose.

People Express also offers its employees a generous benefits package consisting of competitive salaries, stock purchase, stock bonus and stock option plans, profit sharing and other benefits. Every People Express employee is a Company stockholder. When you see a People Express employee, you also see an owner of the Company, and, therefore, one who has a strong interest in the success of the Company. You might be interested to know that about one-sixth of the outstanding common stock of the Company is held by employees of the Company; this excludes the stock held by the senior founders of the airline. In addition, People Express has implemented an extensive profit sharing plan for all of its employees, that, when coupled with its already competitive salary scheme, makes its employees among the highest paid in the industry.

Our innovative methods are the kind of labor protections that the marketplace can and must develop for companies to be successful in a competitive environment. If this sounds like a fantasy about how business can operate in an enlightened environment where all employees are truly involved in every facet of the business and management of the company, and are appropriately rewarded for the fruits of their labor, I can assure you that it is real and a success at People Express. We earned a profit after only 6 months of operation. After slightly more than a year's operation, for the six months ending June 30, 1982, we earned an operating profit of almost $6 million. We carried over 2 million passengers more than 1.8 billion available seat miles while offering fares ranging from 50 to 75 percent below the fare levels that prevailed before People Express began flying.

This is precisely what Congress had in mind when it passed the Airline Deregulation Act. Other new companies are attempting to replicate our achievements and existing airlines are also expanding, creating new employment opportunities and new choices of services for consumers. It would be a shame if the Congress were now to impose artificial measures erroneously intended to "help" labor that will, in fact, hinder both employment opportunities in the industry and the attainment of the objectives of deregulation.

STATUTORY LABOR PROTECTIVE PROVISIONS ARE INCONSISTENT WITH DEREGULATION

In 1978, Congress enacted the Airline Deregulation Act and fundamentally changed its 40 years of policy. The Act provided for the elimination of most governmental economic regulation of the airline industry and set forth Congress' unequivocal mandate to promote, encourage and rely on competitive market-based forces to govern the operations of air carriers. At that time, airline unions expressed concern that deregulation would produce some temporary layoffs and other forms of employee dislocation during the period in which the industry attempted to reach a competitive market equilibrium. In response to these perceived concerns, Congress established broad-reaching labor protective provisions in Section 43 of the Act, including a legal hiring preference for certain unemployed airline workers and government-paid benefits for eligible employees. These extremely generous provisions certainly should represent the outer limits of governmental involvement in the labor area in a deregulated industry.

The issue on the table today is whether additional statutory labor protections should be imposed now on the airline industry. No matter how you look at it, mandating LPP's would represent a fundamental retreat from the deregulation policy and a reversal of the benefits of that policy.

For 40 years before deregulation, airlines operated under the protective umbrella of strict public utility regulation and enjoyed federal protection from price and route competition. Under such a system, it may arguably have made sense for air carriers to be required to provide certain employment protective benefits in exchange for the protective environment in which they operated. But even under a regime of strict regulation, the imposition of LPP's by the Civil Aeronautics Board was always on a discretionary case-by-case basis and was limited to transactions involving mergers of airlines, acquisitions of control involving the unification of two or more companies, or, on one occasion, a massive route exchange between two airlines. It would be ironic, indeed, for Congress to consider mandating LPP's on the very eve of total deregulation when during all the years of tight regulation such action was left to the complete discretion of the CAB.

LPP's had their origin in the tightly regulated railroad industry in the 1930's and evolved into the form by which we know them today in a series of CAB merger cases commencing with the 1950 United Airlines-Capital Airlines merger and ending with the 1972 Allegheny-Mohawk merger. Over the years, the CAB has imposed such provisions very carefully, after full and extensive hearings, giving full consideration to the individual circumstances of the case at hand.

The fundamental reason for the CAB's imposition of LPP's at the time was to avoid disruption of needed air transportation services by preventing "labor unrest". This was viewed as an important consideration, particularly since the government directly limited airline routes and acted, in effect, as a guarantor of the air carriers' financial viability. Today, in an environment of free entry and unfettered price and route competition, such an approach makes absolutely no sense. In recognition of this fact, the CAB announced in 1979 that it would no longer routinely impose LPP's. It found that:

The new [Deregulation] Act's emphasis on competition and the free play of market forces * * * does mandate a decreasing role for the Board in airline industry management * * *. The Board believes that it has been directed, under the Act, to minimize its impact on the airline industry in all areas except those specifically earmarked for continued regulation. *Pan Am-National Merger,* CAB Order 79-12-163, 164, 165 (1979) at 66-67.

STATUTORY LPP'S WILL HINDER THE AIRLINE INDUSTRY'S ADJUSTMENT TO DEREGULATION

Statutory labor protective provisions are philosophically inconsistent with deregulation, and will, in a very real and practical sense, hinder the efforts of the airline industry to adjust to its fully competitive environment. While before deregulation, the government shielded the industry from the marketplace and, for that matter, from the state of the economy, airlines now have to fend for themselves. A number of airlines are reportedly in severe financial distress. While many factors are responsible for such situations, including, most importantly, the current severe economic recession, high interest rates and over-capacity, one thing is certain: deregulation is not the cause of the carriers' current travail. Any systematic analysis of the reasons that certain carriers are hurting today will trace the root causes back to management decisions and the economy.

At the same time, many carriers—including prederegulation carriers—are enjoying relative prosperity, and are (to the extent the FAA allows them) expanding their operations. The operation of normal market mechanisms should enable expanding carriers to purchase or lease the aircraft they require from those carriers that need to divest themselves of excess aircraft in order to remain economically viable.

This is where the imposition of LPP's as contemplated by the conference report accompanying H.R. 5930, the War Risk Insurance Bill, would have done its chief mischief. Language in that report would have required the imposition of LPP's on virtually every transaction between two airlines, including, under some circumstances, the sale or lease of a single aircraft. The significant economic costs associated with LPP's would make virtually all such transactions uneconomical. Recognition of this fact played a part in the CAB's recent decision not to impose LPP's in the recent Braniff-Eastern route transfer case, in which both Braniff and Eastern made it clear that the transaction would be cancelled if LPP's, and their associated costs, were imposed.

Because People Express is expanding, we were particularly concerned by the language contained in the War Risk Insurance Conference Report. People Express will need to purchase new aircraft to serve its growing route system, and is in a position to purchase such aircraft from carriers that are trying to reduce the scope of their operations. LPP's will seriously hinder these efforts, and thereby seriously curtail employment opportunities. It is clear that such language would impair the domestic market for used aircraft for all but the largest carriers. The impact will be particularly severe for small airlines for which each airplane represents a relatively large percentage of its assets.

This risk is not speculative; believe me, it is very real. At the time of the conference deliberations on the War Risk Bill, People Express was considering the purchase of additional aircraft from several small domestic carriers. Although we were only seeking to purchase a small number of aircraft, the 20 percent LPP-trigger in the conference report would have come into play. The possibility that Congress might have enacted costly statutory LPP's during the midst of these considerations forced People Express to look to the safer haven of foreign sources for its aircraft. Unfortunately, such overseas transactions must necessarily be at the expense of domestic carriers that will thus not be able to dispose of unneeded aircraft. Without the ability to freely adjust their assets, domestic carriers' economic problems will be exacerbated to the ultimate detriment of all of the employee work force. Ask yourselves who would really pay the cost of such strictures. It will be the airline employees. Carriers burdened with idle aircraft are not employment generators.

It therefore seems to be incredibly short-sighted for the proponents of statutory LPP's to believe that the mere existence of LPP's will benefit their constituents, without looking further to realize that the exhorbitant economic costs associated with LPP's will surely cancel transactions that otherwise would have occurred—transactions that would have meant more jobs for some and continued employment for others.

STATUTORY LPP'S UNDERMINE COLLECTIVE BARGAINING

Under the Railway Labor Act, the terms and conditions of employment for airline employees are to be settled by the collective bargaining process. The many elements of a labor contract, including such things as wages, hours, vacations, job security, pension benefits, and compensation for furloughed or downgraded employees, are all interrelated and traded off against each other in the bargaining process. Some bargaining units may be willing to trade additional wage increases for increased job security, or forego increased fringe benefits in exchange for extended furlough protections, including LPP-type protections.

The important point is that the statutory imposition of LPP's would remove those options from the bargaining table. In the absence of a showing that bargaining units are at some inherent disadvantage vis-a-vis the air carriers—and the fact that airline employees are among the best paid in the country would seem to negate such a contention—there is no sound policy reason for the federal government to take the extraordinary step of legislatively intervening in the collective bargaining process in this industry.

Intervention of this scope would be unprecedented for a deregulated industry. Is there something unique about the airline industry that sets it apart for different treatment than any other business in this country? I think not.

If there is a problem in this area, that problem has not been caused by deregulation, and moreover, is not unique to airlines. The issue of job protection should be addressed, if at all, on a national level—it is not an individual industry issue. If LPP's make sense for the airlines, then they must make sense for every other competitive industry in this country. If LPP's do not make sense for these other industries, then there is no reason to single out the airline industry for their imposition.

CONCLUSION

People Express has a strong commitment to the success of deregulation as well as great hopes for the future of the airline industry. We see that future as requiring companies (not government) to develop mechanisms to protect their employees and have them become part of the management and profit-distribution process. It would be unreasonable for Congress to expect the industry to adapt successfully to its newly competitive environment if it is shackled by statutory rules that limit carriers' flexibility to adjust in accordance with the demands of the marketplace.

Senator **Kassebaum**. The next witnesses are a panel. I hope they have not given up and gone home. Mr. Roy Williams, the general president of the International Brotherhood of Teamsters; and Linda Puchala, president of the Association of Flight Attendants.

STATEMENT OF WILLIAM GENOESE, PRESIDENT, TEAMSTERS LOCAL 732, NEW YORK, N.Y.

Mr. **Genoese**. I am here on behalf of our general president, Roy Williams and the International Brotherhood of Teamsters. We already have submitted a brief and we have some opening remarks, and also too that we would be open for any questions that may come from the other Senators and yourself.

I would like to continue on. The International Brotherhood of Teamsters welcomes this opportunity to express its support for the congressional mandate that certain labor protective provisions be put upon various intercarrier transactions, such as mergers, acquisitions, and consolidations. The public interest, airline industry employees, and carriers need the stability provided by the protective provisions which are designed to safeguard the free flow of commerce.

The Teamsters Union, with its 2 million members, is the largest union in the free world. The Teamster airline division represents approximately 35,000 employees and is one of the larger unions in the air transportation industry.

Our members are employed in all phases of the industry: certified carriers, including scheduled and supplemental; air taxi and commuter carriers; and intrastate carriers. We represent the various crafts and classes in the industry: pilots and other flight crew personnel; flight attendants, mechanics and related, stocks and stores; clerical, office, flight and passenger service, dispatchers and communications. We hold the distinction of being the only labor organization to represent workers employed in all phases of air transportation and in all its bargaining crafts and classes.

Recently, the Teamsters Union was involved in the Pan American-National merger, the largest merger in the history of the airline industry. This experience confirmed our prior belief that labor protective provisions are necessary to establish a procedural mechanism for the efficient combining of the work forces of the merging carriers. The labor protective provisions appended to the Pan American-National merger agreement gave the parties the structure and standards for resolving through negotiations and/or arbitration such highly emotional issues as the integration of the seniority lists.

The benefits to the traveling public, the carrier and the employees involved in this precedent-setting merger requires us now to support a congressional mandate for labor protective provisions in some intercarrier transactions. Contrary to the opponents of the labor protective provisions, the Mohawk-Allegheny provisions contemplate and encourage collective bargaining. Consequently, these provisions do not constitute an intrusion into the collective bargaining process.

Such provisions are merely a low-cost means of providing for equitable resolution of seniority disputes and other certain minimum payments to employees who are vitally affected by the intercarrier transactions. These provisions also reinforce the Federal labor policy to safeguard against interruptions to the flow of commerce. Because of the historical success of the labor provisions, the Teamsters Union urges Congress to mandate their inclusion in various intercarrier transactions.

Further, the Teamsters recommend that after the Civil Aeronautics Board on December 31, 1982, loses its authority to impose labor protective provisions, that the Department of Labor be given the enforcement power over the congressionally mandated Allegheny-Mohawk provisions.

Senator, I would like to make something for the record here, as I happen to be the chairman of the Pan American-National merger representing the Teamsters, which is the biggest union on the property, and I can tell you the pitfalls as well as the pluses of having the Allegheny-Mohawk provisions being set forth in order to protect the workers.

It was a very difficult time, especially when the economy started to go down, and that we wanted to make sure that Pan American made whatever efforts they could to put their best foot forward in trying to merge the company. A lot of people talk about pilots, they talk about various other crafts. We happen to represent people who, like in any other airline, come from 100 domiciles. They do not come from one domicile and they do not come from one class of occupation. They come from numerous classifications.

So, when you swap routes or when you move people around from one place to another, you are affecting them, being uprooted from their home place where they have been living for a long time, and this should be taken into consideration.

We sat down with the company, we said we wanted to work out the seniority and anything that we could not work out we would send to arbitration. Of course, our adversaries turned around and said, you should have it in negotiations, and to work it out under the Railway Labor Act is a long-term procedure, because when we had the merger with Pan American and National we had just completed a 4-year contract and a contract that was binding on us during that particular time.

What it was, it was a long effort of trying to merge them together, using all of our strength and cooperation, of statistics, in taking care of the people, and in an adverse time when certain airlines were not doing well. So, fortunately enough, we got it together.

But there were certain aspects of the agreement put together, like station agents, which were a different classification than they had on Pan American, and they had different unions on the property because they fell into different categories. And when they fell into different categories, somebody had to make that decision because we did not have control over it completely, the company did not have control over it completely, and the other union did not have control over it completely. And the CAB had to turn around and say that at that particular time that we would now set up an arbitrator to rule on these people's rights, are they going to be working or not working, where their promotional increases may be, and various things would be covered under the seniority aspect.

Now, since the merger of Pan American and National has been put together, an awful lot of stations have been closed, and there is no control over these stations opening and closing, and they use these people continuously from one place to another. And what happens, they lose out, and they have long service and a vested interest in the company.

I would like to say this in closing: That I have a lot of other information and a lot of it has been covered, but when People Express says here about collective bargaining, you all know there is no such thing as collective bargaining on their property. And the people we represent in various companies, like Eastern, American, United, and TWA, in the classification of clerical and passenger service people, nobody whatsoever represents them, and by not representing them therefore nobody can protect their particular rights. And, I think, somebody should be protecting their rights as far as fair treatment or a merger taking place, because these people have no input whatsoever to their company in saying, what is my future, and depend upon the company taking care of them. That is not so.

[The statement follows:]

Statement of Roy L. Williams, General President, International Brotherhood of Teamsters

INTRODUCTION

The International Brotherhood of Teamsters welcomes this opportunity to express its support for a Congressional mandate that certain labor protective provisions be imposed upon various inter-carrier transactions such as mergers, acquisitions and consolidations. The public interest, airline industry employees, and carriers need the stability provided by protective provisions which are designed to safeguard the free flow of commerce.

The Teamsters Union, with its two (2) million members, is the largest union in the Free World. The Teamster Airline Division represents approximately 35,000 employees and is one of the larger unions in the air transportation industry. Our members are employed in all phases of the industry: certified carriers (scheduled and supplemental), air taxi and commuter carriers and intra-state carriers. We represent the various crafts and classes in the industry: pilots and other flight deck personnel, flight attendants, mechanics and related, stock and stores, clerical, office, flight and passenger service, dispatchers and communications. We hold the distinction of being the only labor organization to represent workers employed in all phases of air transportation and in all its bargaining crafts and classes.

Recently, the Teamsters Union was involved in the Pan American/National Airlines merger—the largest merger in the history of the airline industry. This experience confirmed our prior belief that labor protective provisions are necessary to establish a procedural mechanism for the efficient combining of the work forces of the merging carriers. The labor protective provisions appended to the Pan American/National merger agreement gave the parties the structure and standards for resolving, through negotiations and/or arbitration, such highly emotional issues as the integration of the seniority lists. The benefits to the traveling public, the carrier, and the emplyees involved in this precedent setting merger requires us now to support a Congressional mandate for labor protective provisions in some inter-carrier transactions.

I. LABOR PROTECTIVE PROVISIONS ESTABLISH A PROCEDURAL MECHANISM FOR RESOLVING DISPUTES

The underlying theory of Federal labor policy in the railroad and airline industries is to insure to the public continuity and efficiency of interstate transportation service, *Union Pac. R.R.* v. *Price*, 360 U.S. 601, 609 (1959). To accomplish this goal, the statutory scheme of the governing labor laws have been designed to protect against the interruption to the flow of commerce due to the failure of carriers and their employees to settle peaceably their disputes.

With this policy in mind, the Civil Aeronautics Board and other Federal agencies regulating commerce have conditioned their approval of inter-carrier transactions, such as mergers and acquisitions of control, on the adoption of labor protective provisions. These protective provisions provide for the negotiation and/or mandatory arbitration of seniority list integration, and offer certain minimum payments to employees who lost their jobs or are otherwise adversely affected by the transaction.

As the subcommittee is aware, seniority is critical in work assignments, layoff and recall as well as most other competitive working conditions in the airline industry. Consequently, seniority list integration is an important element in successfully implementing a decision to bring together the work forces of merging carriers. If not for orderly mandatory procedures, like those contained in the Allegheny-Mohawk labor protective provisions, efforts to integrate seniority lists and resolve the related disputes would likely result in labor unrest.

Critics of labor protective provisions have maintained that they constitute an intrusion into the collective bargaining process. However, a review of the Allegheny-Mohawk provisions indicate that they contemplate and encourage collective bargaining. Section 3 of the standard provisions states, in pertinent part:

> Insofar as the acquisition affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, *where applicable, agreement through collective bargaining between the carriers and representatives of the employees affected.* [Emphasis added].

This section of the protective provisions also provides for binding arbitration, if the parties fail to agree.

In essence, imposition of labor protective provisions is the Civil Aeronautics Board's recognition of the fact that some inter-carrier transactions require a faster dispute resolving mechanism than provided by the Railway Labor Act. Lengthy delays during which the operations of the merging carriers cannot be integrated will likely have an adverse impact on the financial status of the surviving carrier.

In contrast to the labor protective provisions, the mandatory procedures of the Railway Labor Act involve time consuming periods of negotiation and mediation, during which the carrier must maintain the existing rates of pay, rules, and working conditions. It is not uncommon for parties to take one to two years to reach agreement under the Railway Labor Act's procedure.

The success of the labor protective provisions is indicated, as Senator Cannon pointed out in the War Risk Insurance debate of August 12, 1982, by the fact that, in the last four years of mergers or acquisitions handled by the CAB, the airlines involved requested that these provisions be imposed. The carriers realize that these provisions play a critical role in combining work forces and resolving potentially disruptive seniority disputes.

II. COLLECTIVE BARGAINING UNDER THE RAILWAY LABOR ACT IS NOT AN EFFECTIVE SUBSTITUTE FOR LABOR PROTECTIVE PROVISIONS

It is well recognized that the underlying justification for granting the CAB the authority to impose labor protective provisions is to prevent mergers from being obstructed by labor disputes. *Railway Labor Exec. Ass'n.* v. *United States,* 339 U.S. 142, 150–154 (1950). Thus, several courts have held that certain merger-related disputes should be handled by negotiations under the labor protective provisions.[1] The basis for these court holdings is that negotiations over seniority integration, for example, under the Railway Labor Act procedures, with its corollary of a right to strike, would have the effect of jeopardizing the merger.

Some examples of bargaining in merger situations, without labor protective provisions, best demonstrate why Congressional action to mandate the imposition of such provisions is warranted.

Example No. 1—The larger Carrier A whose clerical and related employees are represented by Union I merges with Carrier B whose clerical and related employees are represented by Union II. Under Federal labor law, the union which represents the majority of employees in the merged craft or class becomes the bargaining agent for the overall group. Thus, Union I obtains bargaining rights for the clerical and related employees of former Carrier B upon recognition or certification.

Post-merger Carrier A and Union I must now commence negotiations on the highly emotional issue of integration of the seniority lists for this complex craft or class of employees, who work at many different locations and in numerous job classifications. It should be remembered that the job classification and lines of progression may vary from Carrier A to Carrier B.

Absent labor protective provisions, the numerous seniority disputes which are likely to arise must be resolved through the protracted negotiation and mediation procedures of the Railway Labor Act. These procedures do not require binding arbitration; therefore, the exhaustion of mediation, without agreement, may result in a work disruption which interferes with commerce and defeats the intent of the merger.

Example No. 2—If as the critics urge, a labor organization negotiates labor protective provisions in its bargaining agreement, the numerous merger-related seniority disputes may still not have an efficient mechanism for resolution. Use the merger in Example No. 1 above, but add the fact that Union II's contract with Carrier B contained protective provisions. Under Federal labor law, following a merger the status of the bargaining agreement of the minority union (Union II in this example) becomes clouded. Thus, the negotiated labor protective provisions in Union II's contract may not be available to protect the seniority rights of any of the post-merger employees.

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[1] *Kent* v. *CAB,* 204 F. 2d 263 (2d Cir.), cert. denied, 346 U.S. 826 (1953); *American Airlines* v. *CAB,* 445 F. 2d 891 (2d Cir.), cert. denied, 404 U.S. 1015 (1971).

It is apparent from this example that the effectiveness of negotiated labor protective provisions is a matter of "luck." They apply unquestionably only if the contract containing such provisions survives the merger. Equitable treatment of employees and the uninterrupted integration of carrier operations should not be made to depend on a matter of chance.

III. IMPOSITION OF PROTECTIVE PROVISIONS DOES NOT GRANT AIRLINE EMPLOYEES SPECIAL TREATMENT

We are baffled when opponents of labor protective provisions for airline employees use the excuse that these employees are being singled out for special treatment. This contention ignores the Congressional and Federal agency practice of imposing such protective provisions in other industries.

In the Transportation Act of 1940, the value of labor protection was recognized when Congress mandated that no employee affected by an ICC approved consolidation of railroads or other carriers would be in a worse position as to employment for a period of up to four (4) years from the effective date of the consolidation.

Congress reiterated its concern for fair treatment for employees in the railroad industry by including additional employee protection provisions in the following recently enacted laws: Rail Service Passenger Act of 1970; Regional Rail Reorganization Act of 1973; Railroad Revitalization and Regulatory Reform Act of 1976; and Rock Island Railroad Bill of 1980. Employee protections in these Acts included priority in re-employment if terminated or laid off, relocation allowances, paid training or retraining, protection to working employees against loss of benefits, and continuation of collective bargaining rights.

In the Redwood National Park Expansion Act of 1978 (Pub. L. 95-250), Congress provided that employees, whose jobs were lost as a result of expansion of the Park, were to receive preference in hiring for "both Federal civilian jobs and jobs with certain private employers." In addition, these employees were provided with a program of income and benefit maintenance, paid retraining, and job relocation allowances. Any layoff of a Park employee between May 21, 1977 and September 30, 1980, was conclusively presumed to be related to the expansion of the Redwood National Park.

Most recently, the Senate in S. 898, the A.T. & T. breakup bill, provided for labor protective provisions to protect communications industry employees from the adverse impact of deregulation. Under this bill, an A.T. & T. employee who had completed the probationary period—6 to 12 months depending upon the job classification—was entitled to full salary for seven years.

The foregoing examples demonstrate that it has been the Federal policy to apply labor protective provisions in most regulated industries. No justifiable reason exists for excluding air transportation employees from this well-established practice. In fact, a review of Railway Labor Act (RLA) procedures indicate that airline industry employees have a more difficult time protecting their rights than do employees covered by the National Labor Relations Act (NLRA). Unlike NLRA covered employees, craft or class employees under the RLA must agree carrier-wide to be represented by a labor organization. NLRA employees can organize on a single-location basis. Consequently, it is substantially easier for NLRA employees to obtain the protections and benefits of collective bargaining. RLA covered employees, who are discharged or otherwise discriminated against by employers for attempting to exercise their RLA rights to engage in collective bargaining, do not have the administrative protection of a Federal agency, like the National Labor Relations Board.

There is no such thing as an "unfair labor practice" in the Railway Labor Act. Unlawfully discharged or coerced workers must obtain their redress through lengthy and costly lawsuits in the Federal courts.

EXAMPLES

Sedalia-Marshall-Boonsville Stage Line, Inc.

The National Mediation Board in Case R-4594, certified the IBT as collective bargaining representative for 59 pilots and co-pilots in April, 1976. The Company, one of the largest cargo air taxi carriers, refused to bargain and went to Federal District Court to challenge the Union's certification.

It took more than two (2) years after the IBT won the election before the Company would commence negotiations.

It took four (4) years of litigation in Federal District Court to resolve the cases of pilots allegedly terminated because of their exercise of the RLA provided right to engage in collective bargaining.

Federal Express case

During the course of a Teamster organizing campaign among mechanics and related employees, this large and growing carrier fired pro-union workers and made a fair election impossible. In early 1975, the IBT went to Federal District Court in Memphis, Tennessee, for an injunction to force the carrier to re-employ the workers. The Court ruled that a union does not have standing to assert any rights under the Railway Labor Act until it is certified as a collective bargaining representative.

The U.S. Court of Appeals for the Sixth Circuit upheld the ruling of the District Court and stated (*Charles Adams, et al.* v. *Federal Express Corp.*, 94 L.R.R.M. 2008 (1976)):

"We are reluctant to impose upon a District Court duties analogous to those of the National Labor Relations Board under a different statute, which are best resolved by an administrative agency rather than the judiciary. We would prefer to hold that the District Court has no jurisdiction and that exclusive jurisdiction is in the National Mediation Board."

"*Unfortunately, Congress has not so provided* with respect to those parts of the Railway Labor Act here involved. We are bound by compelling judicial precedent to hold that the District Court has jurisdiction." [Emphasis supplied].

The Court went on to hold, however, "that the Railway Labor Act confers no implied right of action upon an uncertified union to maintain a suit on behalf of employees it seeks to represent." Although individual employees have standing to enforce their organizational rights under the Act, the process is slow and cumbersome. Thus, in *Federal Express*, no relief was awarded until April 26, 1979, when the District Court's final judgment issued. Because the carrier appealed, the employee plaintiffs did not obtain a remedy until six (6) years after the suit was filed. *Adams* v. *Federal Express Corp.*, 470 F. Supp. 1356 (W.D. Tenn. 1979), aff'd, 654 F.2d 452 (6th Cir. 1981).

New York Air Lines

In September 1980, New York Air (NYA), a subsidiary of Texas Air Corporation (TAC) which also controls Texas International Airlines (TXI), applied for CAB certification and approval of the "interlocking relationships and common control," of NYA, TAC, and TXI.

The IBT and a number of other unions, which have existing bargaining relationships with Texas International Airlines, intervened in the CAB proceeding.

The union intervenors sought, among other things, to have the CAB, pursuant to Section 102(a)(3) of the Deregulation Act, to take into consideration as a general factor bearing upon public interest "the need to encourage fair wages and equitable working conditions."

The CAB failed to evaluate New York Air's proposed wages and working conditions and nevertheless issued its certification. The unions unsuccessfully appealed to the United States Court of Appeals for the Second Circuit.

To buttress its position that Congress did not intend the CAB to evaluate the labor standards of applicants for operating authority, the agency argued, before the Second Circuit, that the "employee protection program" in the Deregulation Act of 1978 represented the sole means for protecting the wages and working conditions of industry employees.

These examples clearly show that the labor protective provisions, rather than grant airline employees special treatment, are an effort to compensate for the lack of protection afforded them by the RLA. Equitable treatment of air transportation industry employees requires that they be given the established mechanism in the labor protective provisions for resolution of their merger-related disputes. This is particularly necessary during this period of increased numbers of mergers, acquisitions, and consolidations.

Furthermore, the failure of Congress to mandate the inclusion of labor protective provisions in certain inter-carrier transactions will aggravate the presently existing inequitable situation, wherein airline employees are excluded from coverage under many general labor laws. Our research reveals that air transportation industry employees are not covered by such laws as: (1) the overtime provisions of the Fair Labor Standards Act of 1938, as amended; (2) worker adjustment assistance provisions of the Trade Adjustment Act of 1974; and (3) the wage and benefit standards required by the Service Contract Act of 1965, as amended.

Thus, under present law, airline employees, unlike others, do not have to be paid time and one-half for work performed in excess of 40 hours in a week. Air transportation employees are not eligible for Federal benefits when they lose their jobs to increased foreign competition, and do not have to be paid prevailing wages for work performed under Federal contracts.

In view of the existing reality, opponents of labor protective provisions should be less concerned about the special advantages afforded airline employees and more cognizant of the fact that these provisions have been valuable in preventing interruptions to the flow of commerce. On January 1, 1983, there will be no Federal agency which has the authority to adopt labor protective provisions in the airline industry. Congress should not fail to recognize the potential for an adverse impact on our troubled economy, as a result of this void.

CONCLUSION AND RECOMMENDATION

It cannot be disputed that, since the 1950's, labor protective provisions have been imposed in certain inter-carrier transactions to safeguard the flow of commerce in the air transportation industry. Opponents of these provisions cannot cite a single incident where labor strife caused a major disruption in a situation, involving a merger or consolidation which included labor protective provisions. This success is explained by the fact that the Allegheny-Mohawk labor protective provisions provide an easily enforceable mechanism for equitably handling employee rights.

In concluding, we ask this subcommittee to examine the significant role played by labor protective provisions in the recent Pan American/National merger. Pursuant to these provisions, the carrier and the Teamsters successfully negotiated a system for seniority integration, involving more than 8,000 employees in locations throughout the country. The protective provisions established a fast and low cost means of combining work forces in the largest merger in aviation history.

Because of the success of labor protective provisions, the Teamsters Union urges Congress to mandate that the Allegheny-Mohawk provisions be imposed in various inter-carrier transactions. Enforcement of these provisions should be committed to the Department of Labor, if as the present law contemplates the Civil Aeronautics Board loses the authority to impose such provisions after December 31, 1982.

Senator KASSEBAUM. Thank you.

I think we will go ahead and hear the other testimony, and then we will go into the questions.

Ms. Puchala, I would just like to say before we hear your testimony, we have heard a lot of talks about pilots here today, but it is the flight attendants, of course, the traveling public sees. And I know from flying a great deal myself since I came to the U.S. Senate, I really do appreciate the extraordinary efforts that they go through when flights are full and have to feed everybody in 1 hour and 20 minutes, or something like that.

STATEMENT OF LINDA PUCHALA, PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS, ACCOMPANIED BY SUSAN EDWARDS, AFA MASTER EXECUTIVE COUNCIL CHAIRPERSON, WESTERN AIRLINES

Ms. PUCHALA. Good afternoon. My name is Linda Puchala and I am the president of the Association of Flight Attendants. AFA represents more flight attendants in the United States than any other union. We have 23,000 flight attendants on 16 member airlines.

With me today is Susan Edwards, chairwoman of the AFA Western Airlines Master Executive Council. Since I have appeared before this committee on numerous occasions and also before other committees here on the Hill, I thought it would be helpful for you to have an opportunity to speak with Susan and to ask her some questions, since she has been out there in the trenches trying to negotiate protective provisions in the many mergers that her company has encountered.

Susan.

Ms. **Edwards**. Thank you, Linda.

Good afternoon. As Linda mentioned, I have represented the Western flight attendants in merger-related issues for the past 6 years. At Western Airlines this has involved two courtships with Continental Airlines and, an attempted acquisition by Air Florida and the recently approved merger with Wien-Air Alaska.

The concerns of the Western flight attendants as we have faced each of these agreements are no different than the concerns of other flight attendants in the industry, for that matter other airline employees. I would like to spend the time allotted to the association this morning to address some of the arguments that I have heard expressed here briefly, both in general and from the specific experience that I have had out on the west coast.

I have heard the critics this morning of labor protective provisions, the LPP's, say that these are a unique bonanza for the airline employees. They seem to have ignored the considerable precedent in the railroad industry, which is much grander in scope and scale than that proposed by the Allegheny-Mohawk LPP's.

There is also precedent, as you know, in other industries which were previously regulated and then moved into an era of deregulation. I am certain that I do not have to recite the precedent, which has been gone over in some detail.

The only thing that seems to be unique with the airlines is that the Government agencies that were responsible for putting the LPP's in place as an adjunct to the Deregulation Act of 1978 have failed to do so. They also seem to ignore the underlying purpose of the LPP's; We have had some discussion here this morning about the emphasis of the status quo in the railroad and airline industries, and the LPP's essentially help maintain the status quo.

Mergers, as we know, are very disruptive. We have faced them a number of times at Western. There are disruptions due to potential layoffs. There are disruptions due to potential displacements and relocations, and also changes in working conditions.

These concerns, I can tell you, are very real to the airline employees the minute they hear the word "merger." In our case, we are getting somewhat used to hearing the word "merger," but nonetheless it still invokes fear for the uncertainty that the merger may bring. The LPP's, of course, do provide some minimal protection in the event of the disruptive merger effects.

I have also heard this morning various opponents of the LPP's express that imposition of these protective provisions is inconsistent with deregulation, and in fact they have been imposed in all post-deregulation mergers. The heightened merger fever brought on by the deregulated environment has increased the potential for disruptive effects in the airline industry and has made the need, I think, for these LPP's even more apparent.

The CAB has recognized this need in some of its written decisions which have emphasized the public interest. Airline chief executives since deregulation have testified to the benefit of the labor protective provisions, both for labor and for management because they do provide a mechanism for the successful integration of the work force, hence the successful consummation of the merger.

It has been suggested that the labor protective provisions are appropriately the subject of collective bargaining. Protracted negotiations under the Railway Labor Act would seem to be inconsistent with the prompt resolution of merger-related issues that is needed. It also makes no sense to me to impose an additional collective bargaining burden on labor when the fundamental merger decisions—if to merge, why to merge, with whom to merge—are made by management.

As Linda mentioned, I have been out there in the trenches, as she puts it, trying to negotiate labor protective provisions. It is very difficult to do. At Western we obtained in January a provision in our contract that says the company would support—and I emphasize the word "support"—labor protective provisions in any merger, acquisition, consolidation or purchase, and we did this in exchange for a 10 percent pay cut. The company has already reneged on the language that says it will support LPP's.

Let us assume for the sake of argument that you are successful in obtaining language in your contract that says the company will provide LPP's. This is not the solution to the problem, and I can give you a couple of cases in point. The situation we were faced with in the first Western-Continental merger, Western-Continental I, was that the carrier threatened to take the position that the collective bargaining agreements would not survive the merger; this was in effect a consolidation and a new corporate entity would be created.

Of course, if you have contractual LPP's and your collective bargaining agreement does not survive, that carries with it a claim that labor protective provisions do not survive. So, there go your hard-fought LPP's right out the window.

If you are the acquired carrier in the case of an acquisition, the problem is magnified. How do you negotiate to cover the situation? During our negotiations in January on the 10-percent pay cut and the LPP issue, management representatives at the table continually said they could never agree to language that would satisfy us because they had no power to bind another corporate entity.

Another problem develops when the employee groups are represented by two different unions, and this has been the case in every Western merger that has been proposed. The Continental flight attendants are represented by a one-carrier independent union. The Air Florida flight attendants are unrepresented, and the Wien flight attendants are represented by the IBT. Western flight attendants, of course, are represented by the Association of Flight Attendants.

We have the language "support LPP's" in our contract. The Wien flight attendants, for example, have no such language. I cannot go in and bargain for the Wien flight attendants.

We get particularly nervous about operating in a vacuum absent the LPP's when it comes to the seniority list integration issue. Let us take for example the Wien merger, and imagine that merger in the absence of the labor protective provisions. There is a great disparity in the numbers of the flight attendants of the two groups. Western has 2,200 flight attendants and we are currently hiring. Wien has approximately 200 flight attendants and half of those are on furlough.

Now, AFA's policy is not that we would impose an integrated seniority list on the smaller group. However, other unions are not always as protective of the entire class and craft as we are.

Obviously, if you imposed a seniority list on the smaller group it would be disastrous for them. They would have no recourse, and it would certainly be unfair. The labor protective provisions provide a framework in which all of these issues can be resolved, and it does provide the employee groups the necessary protections. We obviously urge that they be adopted.

I thank you for the opportunity to testify and would be happy to answer any questions.

[The statement follows:]

Statement of Linda Puchala, President, Association of Flight Attendants

The Association of Flight Attendants ("AFA") represents more flight attendants in the United States than any other Union. We have appeared before this Committee and other Committees on numerous occasions regarding airline mergers, acquisitions and other arrangements between air carriers, and the impact of such transactions upon airline employees. We greatly appreciate the opportunity to once again appear before you concerning these matters of great concern, particularly to the many flight attendants we represent.

While we intend to address all pertinent aspects of the labor protective provision ("LPP") issue, we will devote particular attention to some of the questions which have been previously raised regarding the appropriateness and necessity for LPP legislation.

THE LONG AND CONSISTENT HISTORY OF AIRLINE LABOR PROTECTIVE PROVISIONS

Certain critics of airline LPPs have suggested that they reflect a unique bonanza for airline employees and have only been imposed on an occasional basis where special circumstances have been shown to exist. Such claims are contrary to the undisputed facts and ignore the entire underlying purpose for LPPs.

The statutory framework for labor-management relations in the airline industry

To fully understand the airline LPP issue, it is essential to first appreciate the context in which LPPs arose. This necessarily requires a review of the statutory framework for labor-management relations in the airline industry.

The central theme of federal labor policy in the railroad and airline industries is the avoidance of interruptions to the flow of traffic to the maximum extent possible. Because of the great public interest in a transportation system free from labor disruption, Congress enacted a statute—the Railway Labor Act—which provides a format for labor-management relations in these industries which markedly differs from the scheme applied to almost all other industries. For example, while collective bargaining agreements in other industries "terminate" on specific dates set forth in the agreements, airline labor agreements have "amendable" dates, and they continue in effect past the amendable dates until modified in accordance with statutory provisions. The timetable for "termination" is largely controlled by the federal government through the National Mediation Board. In addition, Congress has placed numerous roadblocks in the path of labor and management serving to greatly restrict the right to engage in self help, e.g., strikes, lockouts, which are not imposed in other industries. The Railway Labor Act's status quo provisions, prohibiting unilateral changes or self-help until an agreement has been reached or the parties have been "released" by the National Mediation Board to engage in self-help, and a "cooling off" period has expired, have often led to extremely protracted negotiations and mediations, sometimes lasting for several years. The federal government has a much more direct involvement in critical aspects of the conduct of airline (and railroad) labor-management relations than is the case in other industries.

The disruptive impact of airline mergers

The merger of two or more air carriers necessarily alters the status quo. Its unsettling and significant impact upon employees of the carriers involved, with possible reductions in force, involuntary relocations, and rearrangement of working conditions, threatens the very type of labor disruption which Congress has so carefully sought to avoid. It is therefore not surprising that as early as 1939, the Supreme Court recognized that a transportation merger "will unavoidably subject . . . labor relations to serious stress and its harsh consequences may so seriously affect employee morale as to require their mitigation * * * " *United States* v. *Lowden*, 308 U.S. 225, 233 (1939).

Since Congress, through the Railway Labor Act, has demonstrated a specific intent to protect the working environment of employees, the Supreme Court in *Lowden* approved of the imposition of LPPs (in that case, by the Interstate Commerce Commission), even though the applicable statute did not, at that time, specifically provide for such protections. The Court's reasoning underlines the importance of LPPs:

"The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored." 308 U.S. at 235-36.

The Court concluded that the provision of LPPs was clearly in the "public interest". 308 U.S. at 232-38.

A similar desire to avoid the potential disruptive impact of a merger in the airline industry led the Civil Aeronautics Board to impose LPPs as early as 1950 in the United-Western case *(United-Western, Acquisition of Air Carrier Property*, 11 CAB 701 (1950), aff'd, sub nom., *Western Air Lines* v. *CAB*, 194 F.2d 211 (9th Cir. 1972)), and to continue thereafter a clear and consistent practice of conditioning approval of any and all mergers upon the provision of LPPs in order to ameliorate the disruptive impact upon employees resulting from a merger. E.g., *United-Capital Merger* Case, 33 CAB 307 (1961); *Allegheny-Mohawk Merger* Case, Orders 72-4-31/32 (1972); *Delta-Northeast Merger* Case, Orders 72-5-73/74 (1972). These LPPs have served to provide a vehicle for integration of seniority lists of the employees of the merging carriers, a dispute-resolution mechanism, and certain minimal economic benefits to employees who lost their jobs, or who were downgraded or otherwise displaced due to carrier decisions to merge.

In light of this background, critics of LPPs focus on a meaningless consideration when they assert that airline LPPs have been "discretionary," not "mandatory." Whatever the label one chooses to employ, LPPs have for decades been a consistent requirement and by-product of airline mergers; they have not been limited to the "exceptional" cases, except to the extent it can be said that all airline mergers are "exceptional" in their impact or potential impact upon the affected employees.

THE CONTINUED NECESSITY FOR LPP'S UNDER DEREGULATION

Perhaps one of the greatest mistakes critics of LPPs make is to argue that LPPs are somehow inconsistent with the changed environment ushered in with the passage of the Deregulation Act of 1978. This position ignores the statute, has been repeatedly rejected by the CAB, and is contrary to the strong statements of support for LPPs which have been made by chief airline executives. If anything, deregulation has heightened the need for LPPs.

Deregulation and LPP's are entirely consistent

Deregulation did nothing to alter the basic foundation of labor-management relations in the airline industry. The unique requirements and format of the Railway Labor Act, with its heavy governmental intrusion in the timing and conduct of negotiations, continue in effect. Nothing in the Deregulation Act, or its legislative history, suggests that Congress intended to unleash labor and management to resolve their disputes on the "battlefield", or that the imposition of LPPs would somehow impede the changes generated by deregulation. If anything, the 1978 statute signaled a clear intent on the part of Congress to provide additional, expanded protections for airline employees through, among other things, amendment of the public interest standard of the Federal Aviation Act to specifically include "the need to encourage fair wages and equitable working conditions" (Section 102(a)(3)), and provision for compensation of employees adversely affected by deregulation. There is no basis for concluding that Congress, while providing substantial benefits to employees, at the same time intended to deprive airline employees of the important protections afforded by LPPs for the past 30 years. It would be particularly inappropriate to deprive airline employees of their right to the minimal protections afforded by LPPs when other promised benefits—such as those contained in the Employee Protection Program—have been denied through a continued failure by government agencies to carry out the mandate of Congress.

The continued imposition of, and need for, LPP's after deregulation

One of the fallouts of the uncertainties generated by deregulation has been a great increase in merger and acquisition fever. Carriers have scurried around in search of attractive partners or targets, and the CAB has, for the most part, placed its stamp of approval on such endeavors.

In considering these post-deregulation mergers, the CAB has determined, following its review of the legislative history behind the Deregulation Act's amendments to Section 408, that the Board's task is still to assess whether the proposed merger satisfies antitrust and "public interest" considerations. In each merger or acquisition since deregulation, the CAB has concluded that the public interest requires LPPs, and has conditioned approval upon the imposition of LPPs, essentially along the lines of the so-called "Allegheny-Mohawk" LPPs, adopted in 1972. The most recent instance was in the Board's Order in the merger of Western Airlines and Wien Air Alaska this past summer. A copy of the Western-Wien LPPs are attached to this testimony as Exhibit A.

Illustrative of the Board's reasoning are the conclusions of Administrative Law Judge Joseph J. Saunders in the *North Central-Southern Merger* case, the first merger before the Board following passage of the Deregulation Act.

"In a long line of merger cases, the Board has invoked this authority [to impose conditions on mergers] to afford protection to air carrier employees who would be adversely affected by the consolidations. The Board had recognized that the integration of facilities and work forces in connection with a merger frequently causes dislocations and hardships to employees and that employee dissatisfaction about these matters may lead to work stoppages and consequent disruptions of air transportation services. Thus, the labor protective provisions were developed to ameliorate the impact upon labor of the dislocations, transfers, and dismissals which may occur in the wake of a merger. The Deregulation Act made no change in the language of Section 408(b) concerning the Board's authority to impose terms and conditions in merger cases." [1]

The carrier-parties to airline mergers have strongly favored LPP's

Another erroneous argument which has been advanced by certain critics of statutory LPPs is that it would inject the government in labor-management disputes, and on the side of labor. As previously discussed, the government already plays a prominent role in airline labor relations through the structure mandated by the Railway Labor Act. In addition, the claim of "union favoritism" has been repudiated not simply by the airline unions, but by the air carriers themselves who have been parties to airline mergers, and who have recognized the critical importance of LPPs and welcomed their imposition.

Thus, for example, Dominci Renda, President of Western at the time of the proposed Continental-Western mergers, strongly endorsed the imposition of LPPs:

Q. In your opinion, and in your experience in the management of airlines, are labor protective provisions beneficial only for labor, or are they beneficial also for management?

Mr. Renda: In my judgment, a reasonable labor protective provision is essential to both sides, in terms of the employees. It gives them the protection which I believe they are entitled to. In the case of a company, it provides them with the opportunity to rely on the dedication, the loyalty, and the moral support of the employees which you must have in order to get the productivity that is essential." *Continental-Western* merger case, Docket 33465, Transcript, p. 179.

Similarly emphatic were the comments of the chief industrial relations official for Republic Airlines, the acquiring carrier in the *Republic-Hughes-Airwest Acquisition* case:

"It is my view that labor protective provisions are fair to Republic and to the employees of both companies. Indeed, they are more than fair. They are absolutely necessary if there is to be a successful integration of employees in an industry such as this.

"Absent the labor protective provisions, I have serious doubts whether many past consolidations in the industry would have been possible.

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[1] Recommended decision in *North Central-Southern Merger* case, Docket 33136, dated February 9, 1979, pp. 78–79.

"We may all tend to take labor protective provisions for granted at times, but it is useful to step back occasionally and consider what would happen if they were not there—and also to evaluate the advantages of their application. Everyone can be thankful that the provisions are there and will be continued in the future."[2]

LPP's do not reflect "special interest" legislation

The strong support for LPPs from airline officials further dispels the charge that LPPs reflect a "special interest" benefit for airline employees. As much as we would like the CAB to recognize the interests of airline employees, we in the labor movement recognize that the CAB's imposition of LPPs have not been motivated by a special concern for affected employees, but have instead reflected the Board's determination that the overriding public interest—a factor to be considered in assessing mergers under Section 408—would best be served by providing airline employees with some protection against the likely disruptive impact of mergers. The substantial disruption which has followed from the introduction of deregulation—with carriers going out of business, and extensive furloughs of airline employees—has only heightened the need for basic employee protection, such as that provided by LPPs. To ignore the serious plight of airline employees would not only be heartless, but simply could not be squared with any plausible concept of the public interest.

LPP's cannot be left to the negotiating table

Another frequent cry of LPP critics is "leave the subject to the negotiating table." But there are several important and practical reasons why merger-related employee matters—including LPPs—cannot simply be left to negotiations under the Railway Labor Act.

Under the Federal Aviation Act and the Deregulations Act, airline mergers or acquisitions cannot be approved if they are not in the public interest. Presumably, a determination that a particular merger or acquisition is in the public interest carries with it the notion that the public is better served by combining the opeations of the carriers involved rather than having them operate separately. However, a combination of operations presents a number of problems, some involving the affected employees. In most instances, the employees of the respective carriers to the merger or acquisition each have their own established seniority lists and other working conditions. Prompt integration of the separate workforces is essential for effective melding of the operations, yet the probability of this occurring if the matter is left entirely to negotiations under the Railway Labor Act is extremely low in light of the previously described extensive delays built into the statutory bargaining process. Under the statute, seniority integration could not be accomplished until agreement is reached or the processes of the act are exhausted. The so-called "standard LPPs" attached to airline mergers provide the alternative solution to the problem by supplying a specific mechanism for integrating seniority lists, including resort to arbitration if necessary.

Even if a carrier was willing, through negotiations, to commit to LPPs in the event it was involved in a merger or acquisition—and many carriers have been unwilling to do so to date—that would not solve the problems presented. For example, if one carrier with negotiated LPPs merged with another carrier without negotiated LPPs, which rules would govern? Throw in the added factor—which has been present in each post-Deregulation merger—that different unions represent a particular employee group, e.g., flight attendants or agents, on the merging carriers, and the prospect for uncertainty, disruption and above all delay becomes a foregoing conclusion. Again, such results do not serve the public interest.

LPP's should be statutorily imposed

For the reasons set forth above, we urge that the standard LPPs, although minimal in scope, be required as a condition of any mergers, acquisitions, consolidations, or other combinations of air carriers, regardless of the size of the carriers involved. This, of course, would merely continue the practice which has applied to every merger or acquisition approved by the CAB since 1950. For similar reasons, this would place no new roadblocks in the path of carriers desiring to merge.

While parties should be free to negotiate with regard to LPPs, the employees should be assured they will receive no less than the minimal protections set forth in the standard LPPs.

Contrary to the fears of certain LPP critics, the statutory requirement of LPPs need not result in any increased federal government activity, since interpretation, application or enforcement of LPPs can be accomplished without the direct involvement of governmental agencies. Section 13 of the standard LPPs provides for resolution of disputes or controversies arising with respect to LPPs by an arbitrator selected from a panel of seven (7) names furnished by the National Mediation Board subject to the parties' right to agree upon another method of dispute resolution or selection of an arbitrator. These procedures can be utilized to resolve all issues related to the LPPs, including whether the LPPs are applicable to the particular controversy. No governmental agency would be required to be involved except for the mediation board's provision of a panel of arbitrators, where necessary. This is a role the mediation board plays on an ongoing basis in fulfilling its obligations under the Railway Labor Act.

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[2] Testimony of Gowan J. Miller, Vice President-Industrial Relations, Republic Airlines, Inc., Exhibit RC-401, pp. 5, 6, 7.

Section 408 of the Federal Aviation Act should be retained

Section 408 of the Federal Aviation Act provides procedures for approval or disapproval of mergers, consolidations and the like through which a whole panoply of public interest and antitrust considerations may be aired. The Deregulation Act did not eliminate the need for evaluating public interest factors in passing on airline mergers. On the contrary, Congress in 1978 expanded the public interest factors to be considered by the Board to include "the need for fair wages and equitable working conditions." (Section 102(a)(3) of the Federal Aviation Act).

While the statutory provision for LPPs, as discussed above, would greatly lessen any adverse impact to the public interest resulting from Section 408 transactions, it would not remove the necessity for evaluation of public interest concerns including the requirements of Section 102(a)(3), as well as non-labor related public interest concerns. Indeed, without the procedures currently imposed by Section 408, including the information the applicant is required to file, it will be difficult, if not impossible, for any concerned parties to know if the public interest is being served or harmed by a proposed 408 transaction, or whether the LPPs which we are proposing to statutorily require are in fact being provided. We therefore urge a retention of Section 408, intact, as amended by the Deregulation Act of 1978. We suggest that the Section 408 issues can either continue to be handled by the CAB, or the Justice Department, as per the Deregulation Act of 1978, or the Department of Transportation, which has a working familiarity with overall transportation issues and public interest concerns.

We hope the above remarks are of assistance to the Committee in its deliberations. We remain available to address any additional matters the Committee deems appropriate, and to assist in the drafting of appropriate legislation. We are confident that the Committee will agree upon legislation which meets our mutual concerns.

APPENDIX A

WESTERN-WIEN

LABOR PROTECTIVE PROVISIONS

Section 1. The fundamental scope and purpose of the conditions hereinafter specified are to provide for compensatory allowances to employees who may be affected by the proposed merger of Western Air Lines and Wien Air Alaska approved by the attached order, and it is the intent that such conditions are to be restricted to those changes in employment due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about by other causes are not covered by or intended to be covered by these provisions.

Section 2. (a) The term "carrier" as used herein refers to Western, Wien, Eagle Holding Corporation or to any survivor of the proposed merger and any assignee or successor in interest to Western or Wien.

(b) The term "effective date of the merger" as used herein shall mean the effective date of the amended certificates of public convenience and necessity transferred to Western pursuant to the approval granted in the attached order.

(c) The term "employee" as used herein shall mean an employee of the carriers other than a temporary employee who regularly works or is scheduled to work twenty hours or more per week.

(d) The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge or pool in whole or in part their separate airline facilities or any of the operations or services previous peformed by them through such separate facilities.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

Section 4. (a) Subject to the applicable conditions set forth herein, no employee of either of the carrier involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to his displacement so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation of the position held by him immediately prior to such date, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which the elects to decline.

(b) The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last 12 months in which he performed service immediately preceeding the date of his displacement (such 12 months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee; and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

(d) The protection afforded herein shall only apply to displacements occurring within a period of 3 years from the effective date of the merger (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of 4 years from the date on which the employee is displaced.

Section 5. (a) Any employee of the carriers involved in the merger who is deprived of employment as a result of said merger shall be accorded an allowance (hereinafter termed a "dismissal allowance"), based on length of service, which (except in the case of an employee with less than 1 year of service) shall be a monthly allowance equivalent in each instance to 60 percent of the average monthly compensation of the employee in question during the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the acquisition and extending in each instance for a length of time determined and limited by the following schedule:

Length of service (years):	*Period of payment (months)*
1 and less than 2	6
2 and less than 3	12
3 and less than 5	18
5 and less than 10	36
10 and less than 15	48
15 and over	60

In the case of an employee with less than 1 year of service, such employee shall not be covered by the benefits provided in this section, but shall receive such benefits, and only such benefits, as are provided by section 7.

(b) For the purpose of these provisions, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for 1 month's service for each month in which he performed any service (in any capacity whatsoever) and 12 such months shall be credited as 1 year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of the carrier: *Provided*, that in calculating the dismissal allowance for such an employee, such allowance shall be based upon the compensation paid such employee by the carrier during his last 12 months of service on the company payroll and not on the compensation he may have been paid by the employee representative organization.

(c) An employee shall not be regarded as deprived of employment in case of his resignation, death, or retirement on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furlough because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of the merger who is not deprived of his employment within 3 years from the effective date of the merger.

(d) Each employee receiving a dismissal allowance shall keep the merged carrier informed of his address and the name and address of any other person by whom he may be regularly employed.

(e) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a dismissal allowance accordingly if any is due.

(f) An employee receiving a dismissal allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(g) If an employee who is receiving a dismissal allowance returns to service, the dismissal allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, however, he shall be entitled to protection in accordance with the provisions of section 4.

(h) If an employee who is receiving a dismissal allowance obtains other employment, his dismissal allowance shall be reduced to the extent that the sum total of his earnings in such employment plus his allowance and any unemployment insurance benefit (or similar benefit) exceed the amount upon which his dismissal allowance is based: *Provided*, that this shall not apply to employees with less than 1 year's service.

(i) A dismissal allowance shall cease prior to the expiration of its prescribed period in the event of: (1) Failure without good cause to return to service after being notified of a position for which he is eligible and as provided in paragraphs (f) and (g); (2) resignation; (3) death; (4) retirement or on account of age or disability in accordance with the current rules and practices applicable to employees generally; and (5) dismissal for justifiable cause.

Section 6. An employee affected by the merger shall not, during the applicable protective period, be deprived of benefits attaching to his previous employment, such as hospitalization, relief and the like.

Section 7. Any employee eligible to receive a dismissal allowance under section 5 hereof may, at his option at the time of his dismissal, resign and (in lieu of all other benefits and protections provided in these provisions) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of service (years):	*Separation allowance (month's pay)*
1 and less than 2	3
2 and less than 3	6
3 and less than 5	9
5 and over	12

In the case of employees with less than 1 year's service, 5 days' pay, at the straight time rate per working day of the position last occupied, for each full month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in section 5.

(b) One month's pay shall be computed by multiplying by 30 the calendar daily rate of pay received by the employee in the position last occupied prior to the time of the merger.

Section 8. (a) Any employee who is retained in the service of either carrier after the merger (or who is later restored to service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger, and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed 2 working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier and the affected employee or his representative. No claims for expenses under this section shall be allowed unless they are incurred within 3 years from the effective date of the merger, and the claim must be submitted within 90 days after the expenses are incurred.

(b) Changes in place of residence subsequent to the initial change caused by the merger which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 9. (a) The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of the carriers involved in this merger (or who is later restored to such service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger and is therefore required to move his place of residence.

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the merger to be unaffected thereby; *Provided, however*, that if the home is not sold within a substantial period of time after the merger, then the fair value of the home shall be determined as of a date as closely related to the date of sale as possible, with an agreed-upon adjustment being made to exclude any effect of the merger on such fair value. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. (a) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the merger which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within 3 years after the effective date of the merger.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative and the carrier, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the carrier, respectively; these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 10. If either carrier, on or after December 8, 1981, shall rearrange or adjust its force in anticipation of the merger, with the purpose or effect of depriving an employee of benefits to which he should be entitled under these provisions as an employee immediately affected by the merger, these provisions shall apply to such an employee as of the date when he is so affected.

Section 11. Wien and Western shall jointly or severally give at least 45 days written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft, or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of both carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of both carriers.

If requested in writing by any employee or employees of the carriers or the authorized representative of such employee or employees, the date and place of meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such employees arising out of and because of the merger shall be agreed upon within 10 days after such request is received by the carrier. The meeting shall commence within 30 days from the date the request is received by the carrier.

In the event of failure to agree upon a settlement of a problem or of problems presented at the meeting, the unsettled problems may be submitted by either party for adjustment in accordance with section 13.

Section 12. No employee of either carrier shall, as a condition of eligibility for the protection afforded by the terms of this order, be required to accept employment with the surviving carrier that is not within the class, craft, or field of endeavor in which he was employed by either carrier on the date of the attached order.

Section 13. (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein, which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expense of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing the employee or employees, or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.

(b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure, unless and until that alternative method or procedure shall have been agreed to by all the parties.

Senator **KASSEBAUM**. I would like to say, Ms. Edwards, that I think in conjunction with the LPP's and the special bonanza, as you have termed it, I do not know that anyone would regard them as such. I think there is support, obviously, for labor provisions.

The question is really, should they be made mandatory through the legislative process, and that is really what we are trying to determine at this particular point in time. When—obviously, when it was a regulated industry, there had to be that mechanism available through a decision of the Civil Aeronautics Board. Now that we are moving away from that and phasing out the CAB, it is a question of how we deal with it, because I do not think anyone would believe that they were not important.

And, I think, it is not only an issue before the airline industry, but many others. And comparison has been made to railroads, and I think a distinction exists between the railroad industry and the airline industry. But on the other hand, we have many industries which are trying to resolve how best to handle labor negotiations, and whether through making LPP's mandatory we would impair the collective-bargaining process.

And would you care to respond to that?

Mr. GENOESE. Yes; I would like to say, in reference to contract negotiations, a lot of these cases you must have a contract in order to negotiate or to represent the people. In a lot of areas the people are not represented by anybody and have nothing to say whatsoever, and they are either abused or used.

And, of course, the top people have the golden handshake. And, of course, what we are looking for here is written protection, because my experience has been when we sit down with companies, going back over the years and working with the rank and file, they say, you do not have any protection whatsoever and try to negotiate it. And if you do not negotiate it, they say, we are not going to give it to you, and you would have to maybe recourse to a strike.

The idea that to keep commerce going that there are some rules and some standards and some proceedings set down which are important—when you bring out the railroads, it is a little different than the airlines—it is almost one and the same, because they operate under the Railway Labor Act and they do not have any recourse, again, for any unfair labor practices. Their election procedures are different, their collective-bargaining procedures work differently.

And just the case of the engineers just recently going on strike, exercising their right under the Railway Labor Act—of course, the Government stepped in and passed legislation to put them back.

So, in order to avoid all these particular things on a merger, it definitely should be spelled out step by step what they are entitled to and are not entitled to. And the main thing that we want to see, we want to see a healthy airline industry. And we are living in changing times, but the companies themselves want to take the easy way out and they do not want to have their responsibilities to the stockholders and responsibilities to themselves—and they take care of themselves, but they do not think of the poor person who gave their life to the particular job and are now out of the situation.

Senator KASSEBAUM. When you mention the Railway Labor Act, ALPA was the moving force behind the inclusion of the industry under the Railway Labor Act. A strong case has been made for placing the airlines under the National Labor Relations Board.

Mr. GENOESE. We vote yes.

Senator KASSEBAUM. I knew that you were supportive of that, and I wondered if you would be supportive of eliminating the Railway Labor Act as far as it relates to the airline industry?

Mr. GENOESE. Yes; we are for. The Railway Labor Act as it stands today, especially elections procedures and the people being represented—as you know, in the Railway Labor Act, what makes it different, especially in airlines, is that you must have the whole class and craft in order to have an election. And these things make it difficult, again, in representing the people and having some rights.

A case in point: Texas International and Continental just had a merger, and we have been notified by the new company, called Continental, saying that they no longer recognize us as having a contract with Texas International. For 20 years one union or another had a contract there and because a minority of people, that they do have the labor protective provisions there, but the union has no right to go in and sit down and say, hey, we want to negotiate a particular contract. If they didn't have some labor protective provisions, the poor people would be out altogether.

Here there is no union to even speak for them in accomplishing their goals. So, there is room here where people should be protected when mergers take place.

Senator KASSEBAUM. You mentioned being involved in the Pan Am-National merger and the pluses and minuses of that. I wonder what the negative side of that was, if you had a couple of negatives that you feel would be benefited by changing the labor protective provisions as they are so designated now.

Mr. GENOESE. Well, J. J. O'Donnell came in here and talked about Donlan, who is now with the National Football League. I guess I am personally responsible why he left Pan American World Airways. I do not know if I made him a bigshot or he is in a lot of trouble.

I know a lot of people call us up and ask about his personality. He tried to jam down our throat a nonsensible seniority combine which could not even work, and I can understand the National Football League players having trouble with him. And we said, this has to be fair and equitable, and, of course, when somebody looks at fair and equitable it does not work out.

We brought in a man like Usery, the former Secretary of Labor, to sit down and see if he could counsel both sides before we go to arbitration on it, and we worked it out. But there are other people on the airline that did not work it out and had to send it to arbitration because they just could not see eye to eye.

But more important, there was a lot of unsolved issues and the company did not want to address themselves to it, and the only way they could get it addressed is having the CAB ordering arbitration and ordering arbitration to protect that person's seniority. What does that mean? That means nothing to certain people, but it is important to a person in Jacksonville when they close it down and he has no recourse whatsoever for his having his seniority spelled out, or in Memphis or in Mobile or Norfolk, when they have long seniority and they say, where are my rights, and you say, well, we have got to protect your rights.

But the main thing here and anything of sitting down and working it out—now, we had an incident going back when Satin merged with TIA and is Trans-America today. And they said, you do not have any labor protective rights, and the reason why is two separate companies and we are going to do what we want to do.

And the point I am making is, it really comes down to one thing: We are looking for some ground rules that can work out equitably for the industry and the union, and also protecting the people without any disruption whatsoever; and so therefore that the person who is a career person shall be taken care of without being brushed aside like a real nothing.

Ms. PUCHALA. Senator, I would like to comment on the discussion on the Railway Labor Act and whether airline employees should be included under the Railway Labor Act. I guess the bigger question here is, does the Government really want to relinquish control over collective bargaining? That would mean, for example, the elimination of an emergency board like the one that was just called this past week, and then having Congress take action over labor negotiations, which is in fact what you have the right to do in the airline industry.

If the unions mounted a campaign for bringing the labor protective provisions into a contract, supposing we had all of this strength that everybody purports we have, and we reached a situation, for instance, where we have 16 flight attendant groups that now are all going on strike and thereby immobilizing the country—do you not think that Congress would still like to maintain its right to intervene? If not, maybe then we could proceed with the discussion on whether or not we should be under the Railway Labor Act. In light of the empty promises that were made regarding the Deregulation Act, I think that there are many of us that represent airline employees that would move in that direction with a lot of hesitation.

On the issue of seniority integration and especially invoking LPP arbitration in recent mergers—we represent Flying Tiger flight attendants. In the Flying Tiger-Seaboard merger the flight attendant list is in the process of being merged, and the company is going to participate in that arbitration of the seniority list. The company participated in the arbitration of the Pan Am-National seniority list. The company participated in the arbitration of the Delta-Northeast seniority list.

And so we see, especially in the case of flight attendants, where the companies have used the LPP's, and that is why they have supported them, because they want to use them to move the integration of the work force along as well.

Senator **KASSEBAUM**. This came out in earlier testimony. I think that it has been used and been used successfully, and it has provided a framework. Again, I think it goes back to the role of Congress in mandating those provisions at this particular point in time, and this is the point of this hearing, trying to decide what will be the long-term benefit for the health of the industry.

I think we have really all had to take stock of that, because it seems to me, no matter whether it is the railroads or what industry you are talking about, if you are mandating that certain jobs be maintained to the detriment of the health of the industry—and I guess this is where there could be disagreement around the bargaining table—then it seems to me that the employees in labor would be the ultimate loser, because obviously if mergers or route swaps would be either prevented or not even contemplated which might benefit the particular carrier on the whole because of the LPP's that would be mandatorily imposed, then it seems to me that it is really labor who in the long run would suffer.

Mr. **GENOESE**. Can I say something in reference to that? All the scholars and the academic people in the world turn around and say, was deregulation the proper thing to be taking place in 1978? They turn around and they say, it might have been successful if we did not have the high interest rates, the economy going down, and inflation going up and fuel going up. If there are any one of those that disappeared, it probably would be billions of dollars, and who cares when things are good, whatever it may be.

What we see here is there is going to be less and less airlines taking—there will be more mergers and less and less airlines. And what happens here is that the people need some protection. First they were pushed into the deregulation. Now they are pushed into here, that they have no protection whatsoever.

They say, well, where are we going? We gave our life to the industry; we want the industry to be good, and we want it to survive. But the most important thing is here. What about me? Where is my vested interest?

A case in point: The airline industry is in bad shape. A lot of our unions have waived pension payments to their benefit plan, and working with Internal Revenue to make sure that the companies can survive.

I think most unions today are working toward that particular goal, but that does not give up their right in representing their people. That does not give up their right in speaking up for their people, and that does not give up their right in representing them properly, because they cannot represent themselves.

A case in point: that we have got some of our people, they hit a certain age and they cannot transfer from one place to another and pick up their routes. Something should be taking care of them. The company turns around and says, they are too old to work and too young to die. What do we do about those people? Something has to be there. The Government has to protect them in some shape or form.

Now, if the union takes the hard line and says, we have to strike for these particular things, then they are going to be the long losers. When you have a labor protective provision, they plan for that and they have the—they do not have the uncertainty about the strike, because the airline industry has to be put together, because when they leave an airline flying from New York to San Francisco, in San Francisco they cannot have any trouble whatsoever. It has to be put together.

If you are inviting chaos, that is something else again. I also believe that the weaker airlines will suffer by not having labor protective provisions. The strong ones would gain and gain, and you would be eliminating the weaker airlines as you go along. So if you want to really put to death two, four, or five airlines, make sure they do not have any labor protective provisions whatsoever, and a lot of people will be glad about that.

Confidentially, a lot of chief executive officers of some of the weaker airlines said, we would like to see something in there, but do not make it public, because he might be working for the other airline.

Senator KASSEBAUM. Thank you very much.

Ms. PUCHALA. I did have one comment. I think that what has happened in the airline industry as a result of deregulation is a magnified game of Pac-Man, where we have all of the airlines out there gobbling up one another's routes. Without labor protective provisions, what you are asking the airline employees to do is to go and gobble up one another's work, without any consideration as to where we were when we were regulated, where we are right now and where aviation in general is going in the future.

It is the current employees who have built the industry and moved it into the position where we are now, and I think that some consideration is in order for where we were prior to deregulation. Thank you.

Senator KASSEBAUM. Thank you very much.

The next witness is Mr. George Batchelor, chairman of the board of Capitol Air.

STATEMENT OF GEORGE BATCHELOR, CHAIRMAN OF THE BOARD, CAPITOL AIR, INC.

Mr. BATCHELOR. Madam Chairman, I have submitted my statement and I will read a brief summary of that.

Senator KASSEBAUM. Thank you. Your full statement will appear in the record.

Mr. BATCHELOR. I come to you as the chief executive of two smaller airlines. I do not have a golden parachute or a golden handshake, either for myself or any of the employees.

It has been a bumpy road. We began scheduled service just as the industry went into its current tailspin. We are now profitable and want to stay that way. Like a number of other profitable carriers, we emphasize low unrestricted fares and must keep our costs to a mininum.

Our work force has grown substantially in the last 2 years, from 600 to 2,000 in one case, from zero to 400 in the other. We are proud of our record with our employee relations.

The prospect of congressionally mandated labor protective provisions concerns me, first of all because it would signal a retreat from airline deregulation, of which I am a proponent. If this industry is to be healthy over the long term, it must do so on its own. That means in part being free of costly overregulation. I have yet to hear a proponent of LPP's demonstrate how they fill planes, lower prices, increase safety, or foster industry productivity. Nevertheless, the proponents of LPP's ask you to make mandatory during a period of supposed deregulation what was discretionary during regulation.

As an operator of smaller airlines, I am particularly concerned about the application of the LPP's to the sale or lease of more than 20 percent of a carrier's assets or fleet. Small airlines use the scale-down, use the sale and lease of aircraft as a tool to keep costs down and to increase or decrease the capacity as required. In slow seasons we become lessors; in busy seasons we become lessees.

Each of the airlines which I am associated with has 14 aircraft or less. These provisions could apply LPP's to our sale or lease of as few as three planes. The sale or lease of three planes represents a sort of routine business transaction concerning which it seems inconceivable the Federal Government would interfere with such a heavy hand. For many carriers, small and large, the ability to sell surplus aircraft in the used market is essential to their survival.

Because this legislation will tend to discourage many desirable mergers that might otherwise take place in these troubled times, it may actually be counterproductive to employee interests. A carrier like ours, with its innovative marketing approach and low costs, can sometimes succeed in markets where other carriers fail.

A case in point is Brussels and Zurich, where other carriers have backed out of the markets and Capitol has gone into those. For other carriers experiencing difficulties, sometimes a merger before disaster strikes may make sense. It may be possible to acquire all or a portion of a carrier's assets, save jobs by utilizing some or all of its personnel, and probably increase the U.S.-flag share of the market.

That is not going to happen if prospective merger partners are saddled with potentially huge liabilities arising out of a rigid set of labor protective provisions from which even minor modifications cannot be obtained without an act of Congress or Presidential concurrence.

Some argue very sincerely that LPP legislation is required by fairness. I respectfully disagree. Whenever a piece of legislation of dubious economic rationality comes down the pike, we hear about fairness. But fairness to whom?

LPP's are not free. To the contrary, they will increase the industry's costs directly and indirectly.

In closing, I urge this committee not to take irreversible actions during this period of economic stress which will come back to haunt us later and diminish the ultimate recovery of this industry. If it were up to me, there would be no LPP's in the aviation industry. Others hold different views. They are entitled to a hearing.

I urge Congress to allow the agencies which have struggled with LPP's for years to strike the proper balance, rather than placing us all in a legislative straitjacket.

Thank you.

Senator KASSEBAUM. Thank you, Mr. Batchelor.

You heard, I think, probably Mr. Genoese mention the fact that there would be smaller airlines—and some had said do not use their names—but that they would be disadvantaged or will soon be by the larger airlines who can handle labor negotiations, and they would really like to see LPP's legislated and mandated, and it would be a greater protection to them.

Obviously you do not believe this to be true. But are there some smaller airlines that you feel are fearful of being absorbed because they cannot handle labor negotiations?

Mr. BATCHELOR. I have never talked to one, and I have talked to most of the smaller airline executives.

Senator KASSEBAUM. Do you see any advantage to moving from the Railway Labor Act to the National Labor Relations Board as a negotiating facility?

Mr. BATCHELOR. I am not qualified to answer that.

Senator KASSEBAUM. It has been believed that there were some advantages to management under the Railway Act.

Mr. BATCHELOR. I am not an attorney and, as Senator Goldwater said, I am glad I am not.

Senator KASSEBAUM. Well, neither am I.

The usual practice in airline mergers is for the wages of the lower paying carrier to be adjusted up to the level of the higher. Do you think this practice is likely to result in fewer actual consolidations or mergers, if this would be the case?

Mr. BATCHELOR. I think the LPP's would result in less mergers, less route swaps, and be a disservice to the industry.

Senator Kassebaum. Do you believe—and you mentioned the 20 percent, and I had used that earlier regarding Capitol. As far as that requirement regarding the purchase or leasing of equipment and planes, do you see this as really curtailing the sale of equipment, of planes for instance, if there was going to be that requirement, that it would be a decision that a carrier would put off which ultimately would affect the sale of an aircraft?

Mr. Batchelor. Yes, ma'am. A good example: A little over a year ago, in June 1981, Capitol had 8 aircraft and approximately 700 employees. We increased that number of aircraft to 14 and up to over 2,000 employees. Now, with the slowdown in the economy and traffic, we are forced to get rid of three aircraft and we are furloughing employees.

There are plenty of aircraft available. As traffic picks back up, we will acquire additional aircraft. But we would not be able to dispose of those aircraft under the LPP's, as I understand them now, without the labor protective provisions, which would be onerous.

Senator Kassebaum. That is correct. As far as the compromise that was passed in the conference committee, but was defeated in the Senate—and I think this was troubling to a number of people. It bothered me as being very concerned about the health of the aviation industry and general aviation at this particular point in time, as well as commercial aviation. And I think that this is a good example of what would happen, and it seems to me counterproductive in that particular aspect.

Mr. Batchelor. I agree.

Senator Kassebaum. Thank you very much, Mr. Batchelor.

Mr. Batchelor. Thank you.

[The statement follows:]

Statement of George E. Batchelor, Chairman of the Board, Capitol Air, Inc. and Arrow Airways, Inc.

Madam Chairman, distinguished Members of the Committee, it is a great privilege to testify here before you today on an issue of great significance to the aviation industry and traveling public.

Mr. Ignatius and his colleagues have already given you many sound reasons why Congress should avoid getting further ensnared in labor-management relations in the aviation industry. I come before you as chief executive officer of two small airlines. In addition, I have been involved in the aviation industry for over 35 years in the area of buying/selling and leasing large aircraft. I have seen the aviation industry grow into the major employer it is today.

The two airlines I operate, although founded in 1946, have been operating scheduled service since 1979 and 1981.

It has been a bumpy road—we began scheduled service just as the industry went into its current tailspin—but we are now profitable and want to stay that way. Like a number of other profitable carriers, we emphasize low unrestricted fares, and must, therefore, keep our costs to a minimum. Our workforce has grown substantially in the last two years from six hundred to two thousand in one case and from 0 to four hundred in the other. I am proud of our record in employee relations, and am confident for the future, despite the stresses that all of us know are coming in the absence of a substantial economic recovery.

The prospect of Congressionally mandated labor protective provisions concerns me first of all because it would signal a retreat from airline deregulation. I am a proponent of Deregulation, and believe that it has permitted carriers like Capitol and Arrow to create jobs as well as offer passengers price/service options which simply would not have been available under the policies of the past. One need not endorse every recent government decision to recognize that if this industry is to be healthy over the long term, it must do it on its own. That means, in part, being free of costly government over-regulation. I have yet to hear a proponent of LPPs demonstrate how they will fill planes, lower prices, increase safety, or foster industry productivity. Nevertheless, the proponents of LPPs ask you to make mandatory, during a period of supposed deregulation, what was discretionary during regulation.

One specific provision of legislation discussed previously this Session would have been particularly oppressive to smaller airlines. It involves the application of LPPs to sales or leases of more than 20 percent of a carrier's fleet. I would like to thank Senator Packwood for being sensitive to this issue on the Senate floor, particularly as regards distinctions between leases and subleases, but I am afraid that problems still remain. Small airlines, like the ones I am associated with, use the sale and lease of aircraft as a tool to keep costs down and increase or decrease capacity as required. In slow seasons, we become Lessors, in busy seasons, we become Lessees. Each of the airlines which I am associated with has 14 aircraft or less. These proposed provisions could apply LPPs to our sale or lease of as few as 3 planes!

Madam Chairman, Members of the Committee, I made whatever reputation I have in this business by successfully buying, selling, and leasing planes. The sale or lease of three planes represents the sort of routine business transaction concerning which it seems inconceivable that the Federal government would interefere with such a heavy hand. And, for many carriers, small and large, the ability to sell surplus aircraft in the used aircraft market is essential to their survival. When a carrier is losing money because of over-capacity, who is served when the carrier must inform potential buyers of its excess planes that rigid LPPs come in the bargain?

Because this legislation will tend to discourage many desirable mergers that might otherwise take place in these troubled times, it may actually be counterproductive to employee interests. Though I am not an economist, I am aware that the value of mergers is sometimes disputed. That is the subject of the antitrust laws, and I leave it for others to debate. I do know this: you don't necessarily save jobs by waiting until strapped carriers go bankrupt or withdraw from markets under financial duress. Braniff employees certainly know this! A carrier like ours, with its innovative market approach and low costs, can sometimes succeed in markets where other carriers have failed, as in Brussels and Zurich. Where another carrier is expressing difficulties, some type of merger, before disaster strikes, may make sense. It may be possible to acquire all or a portion of a carrier's assets, save jobs by utilizing some or all of its personnel, and probably increase the U.S. flag share of the market. But that's not going to happen if prospective merger partners are saddled with potentially hugh liabilities arising out of a rigid set of labor protective provisions, from which even minor modifications cannot be obtained without an Act of Congress and Presidential concurrence.

Some argue very sincerely that LPP legislation is required by "fairness." I respectfully disagree. Whenever a piece of legislation of dubious economic rationality comes down the pike, we hear about "fairness." But fairness to whom? LPPs are not free. To the contrary, they will increase industry costs directly and indirectly. To the extent industry is able to pass on these costs, the public will face higher ticket prices and fewer will fly. To the extent that the industry can't, we'll have to pare labor costs by layoffs or lower wages and salaries. The increment may be small or it may be large, but it will be there.

In closing, I urge this Committee not to take irreversible actions during this period of economic stress, which will come back to haunt us later and perhaps diminish ultimate recovery of the industry. If it were up to me, there would be no LPPs in the aviation industry. If the Board's earlier rationale of reducing "labor strife" ever made sense, it does not now. We are all in a fight for survival; provisions like this, which go beyond anything the C.A.B. ever did, will do little but disturb a well-functioning marketplace, magnifying the distress of strapped carriers and ultimately their employees and public. Others hold different views and they, too, are entitled to a hearing. I urge Congress to allow the agency which has struggled with these problems for years to strike the proper balance, rather than place us all in a legislated straightjacket.

Thank you very much. I will be pleased to answer any questions you may have.

Senator KASSEBAUM. The next witness is Mr. William Mahoney. Mr. Mahoney, I will let you introduce those who are with you.

STATEMENT OF WILLIAM MAHONEY, REPRESENTING AND ACCOMPANIED BY WILLIAM SCHERI, AIRLINE COORDINATOR FOR INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS; WILLIAM GILL, PRESIDENT, FLIGHT ENGINEERS' INTERNATIONAL UNION; FRANK O'CONNELL, PRESIDENT, TRANSPORT WORKERS UNION OF AMERICA; AND THOMAS ROSTKOWSKI, DIRECTOR OF AIR TRANSPORT DIVISION, BROTHERHOOD OF RAILWAY & AIRLINE CLERKS

Mr. MAHONEY. On my far left is Mr. Thomas Rostkowski, who is director of the Air Transport Division of the Brotherhood of Railway and Airline Clerks. On my immediate right, Mr. William Scheri, who is the airline coordinator for the International Association of Machinists. On my far left, Mr. William Gill, president of the Flight Engineers' International Association. And on my near left, Mr. Frank O'Connell, president of the Transport Workers Union of America.

I have a rather thick prepared statement on behalf of these organizations which I would like to have entered into the record.

Senator KASSEBAUM. That will be done.

Mr. MAHONEY. I have made a number of notes here during the course of the morning. I would like to summarize some of these points, and hopefully, answer some of the questions that have been asked.

The majority of the 300,000 employees in the air transport industry are employed in the crafts which these organizations that sit before you at the moment represent. And at least one of them, the machinists union, is the largest union in the industry, 88,000 members.

Now, mostly because of deregulation and partially because of mergers, we have had enormous cutbacks in employment. We have had cutbacks for a number of reasons, deregulation not being the least of which, of course. For that reason, we support S. 2666, which would remove from the deregulation law the three obstacles that were written into employee protection which have prevented any protection from coming to these employees affected by deregulation; and would also propose a codification of the Allegheny-Mohawk employee protective conditions which because of deregulation are going to be eliminated from the airline industry.

Now, Congress, when it passed the airline deregulation law, this committee particularly, when it passed the bill that became the law ultimately, said that it had a duty to the employees who would be hurt by this law to protect them. As you know, no one has been protected by the deregulation protection in section 43, and very soon no one will be protected by Allegheny-Mohawk because it will cease to exist.

Now, Allegheny-Mohawk has been a daily fact of life in this industry for 30 years. From 1950 to the passage of the Deregulation Act, the CAB consistently imposed this formula or one very similar to it in substantially every case, and they did it in the public interest.

You mentioned a moment ago the distinction between the railroads and the airlines, and I think Mr. Ignatius said the difference was the tracks, the fixed assets. Well, we are dealing not in the area of operations; we are dealing in the area of labor relations and the effects of labor relations upon an industry.

In 1952, the Court of Appeals for the Ninth Circuit, in upholding a CAB imposition retrospectively of labor protection in a route transfer case, adopted the Supreme Court's reasons for upholding the imposition of protection in railroad cases, and they were that employee protection promotes efficiency by the just and reasonable treatment of employees and it prevents or tends to prevent interruptions to commerce when the demands of justice are ignored. And that is the language of the Supreme Court referring to railroads, which the ninth circuit adopted in 1952 with regard to airlines.

And, of course, they both are under the same labor relations act, the Railway Labor Act, which incidentally—I will let the individual unions speak for themselves, but I think the majority of them would remain under that act. They would like to have parts of it changed, but they would basically remain under it.

Now, what we are dealing with here now is not something new. We are not going to set a precedent unless we let Allegheny-Mohawk die, because the precedent is there. We have had the protection. We have had it for 30 years, and our Congress by what it did in 1978 is going to eliminate it.

Now, no serious effort has ever been made by anyone to my knowledge to get rid of Allegheny-Mohawk or any type of employee protection in the industry, either before the CAB or before this body. It was done sort of indirectly and quietly by sunsetting the CAB and transferring some of its functions under 408 to the Department of Justice.

To the contrary, when carriers have testified before the CAB, as they have just stated here this morning, they have said they like it, they would like to keep it. As a matter of fact, Mr. Miller, whose testimony is attached to my prepared statement, said: "Everyone can be thankful that the provisions are there and will continue in the future." And he has gone through two mergers in which Allegheny-Mohawk was imposed in recent years.

Now, they like Allegheny-Mohawk, as you have heard, because of the quick, fair and certain integration of the routes and operations of the merging carriers. I think it was Mr. Ignatius this morning who said something about carriers not liking these LPP's. I have never heard carriers say they did not like them. This is the first time they have ever said that they would impose the integration of their seniority structures in a merger by getting rid or wanting to get rid of the Allegheny-Mohawk protection.

Now, it is obvious that without the LPP's you would go through the procedures of the Railway Labor Act, which take a very long time, as you know, and sometimes those procedures end up in strikes, as the Congress is quite well aware of in the last week or so.

Mr. McKinnon said he wanted to have a test case and he was going to use a route transfer case, for whatever reason I do not know, but he wanted to have a case where he could get into the cost of the Allegheny-Mohawk and all of these protective conditions and discuss something about that. Well, they just had one, at least the day before yesterday.

And the reason why we do not want, incidentally, to have the CAB continue with this authority, this discretionary authority, is because they have changed their philosophy after Congress passed the Deregulation Act. They took the position that Congress had reversed national policy and so what we have now, the CAB the day before yesterday at 4:05 p.m., when they released this in the Braniff-Pan American route transfer case, said: "Moreover, we are aware that LPP's can be costly." It sounds just like Mr. Ignatius, they can be costly. They do not say they are costly. They do not say they have ever been costly and they do not say they would be costly in this particular case. They just say they can be costly—"and can be the cause of substantial difficulties in integrating labor forces." Now, I have never heard that anywhere. There is no evidence in this case, the South American route transfer case, that would indicate that. There has never been any such evidence.

In fact, all the evidence before today has always been to the contrary. This is an ad hoc statement out of whole cloth and it is a statement that indicates the philosophy of the Board and the reason we do not want them to have any further jurisdiction over this.

Now, the carriers and the ATA had a golden opportunity to demonstrate that Allegheny-Mohawk was a financial burden or unjustly enriched employees in the TXI-Continental merger case, but they refused to testify in that case when asked to do so by the CAB. They refused to answer the union interrogatories which my office sought to get them to answer.

They challenged the subpenas that we got the CAB to issue against them to bring them in and make them testify, and only on appeal to the CAB when they were ordered to testify did they do so. And those answers are attached to my statement, those interrogatories. And the sum and substance of them is that Allegheny-Mohawk does not cost anything significantly, certainly not when compared with the savings they make.

And one incident of that: The only cost that I have ever heard of is this cost that was just recently mentioned back in 1975 and 1976 of that Pan Am-TWA route swap. And in that route swap several millions of dollars went to employees.

But as the Board found in that case, Pan Am received a $24 million benefit, and TWA a $25.4 million benefit; and they saved 147 million gallons of gasoline a year. So, if you are going to protect employees, that little bit is not an awful lot to pay when the profits are that enormous.

Now, if I may say just one more thing with regard to this situation, since I see my time is concluding. There is in the industry, as I said, three—there are in the industry 300,000 people. These unions take pretty good care of themselves and the people they represent.

Almost one-third of those people, though, in that industry are not protected at all. They are not represented by any union. They are on their own. And after being in this business for 30 years as a lawyer dealing both with the railroads and airlines, I can tell you, Madam Chairman, that if you do not have a union represent you, you are fair game. There is nothing you can do for yourself.

And there is nothing these people will ever get for themselves unless this Congress imposes some sort of effective protective arrangement for their benefit. And we are going to have—I agree with Senator Goldwater, we are going to have many, many mergers, and these mergers are going to cost hundreds and thousands of jobs, and these people are going to be out in the street and they are not going to have any protection whatever. They cannot negotiate on their own.

Now, we have tried to negotiate, if I could make one more point. The IAM I know has in the last section 6 notices they served put down as one of their notices Allegheny-Mohawk protection. The carriers resisted and did not want to talk about protection. They were talking about wages and other working conditions and rules. And they will continue to do that.

But one of these days that issue will become a strike issue. And we must point out that you have to have, if you are going to have a protective arrangement, you have got to have it on all of the airlines. As the flight attendants just mentioned a while ago, one airline cannot negotiate for another airline, and if only one airline has got the protection it is not going to help.

They all have to have LPP's in place, and that is what it is going to have to be. And we are going to undoubtedly have strikes, and one could reasonably expect little else from employees who were told by the Congress they were going to be protected and deserved to be protected from the ravages of deregulation, and they have not been protected; and, now they find that the protection they have had for 30 years is now also being taken away from them by Congress as the result of enactment of a law 4 years ago.

That is why we support S. 2666 and also, as included in that bill, some codification of Allegheny-Mohawk.

Thank you.

Senator KASSEBAUM. Thank you, Mr. Mahoney.

Does anybody else have comments?

Mr. SCHERI. Senator, I have heard many comments about the Allegheny-Mohawk, and I would just like to explain something, that I sit here and listen to people that think they are experts on it. I am a former merger product myself, and I did come off Mohawk Airlines and we were merged into Allegheny on April 12, 1972. And I helped put together the Allegheny-Mohawk labor provisions that are now under attack before the CAB and in discussion here before you.

And I would like to point out that in that respective merger, going back to 1972, I guess without those protections we would have had total chaos. For example, it was approximately—excuse me. There were approximately 10,000 employees involved between those two carriers. There was double maintenance bases involved, Allegheny being in Pittsburgh, Pa., Mohawk Airlines located in Utica, N.Y.

At that point, Mohawk Airlines was bigger than Allegheny Airlines systemwide. But at merger time there was the main base of Mohawk Airlines shut down in Utica, plus eight other stations. And that company provided—and I am talking about the surviving company. Allegheny provided additional openings on that system to compensate for the job loss in upstate New York.

And many of my old friends—I happened to be a full-time union rep of the machinists at that time, a servicing rep—had to pick up their roots and leave that respective upstate area where they grew up and move into metropolitan areas, such as Pittsburgh, Boston, Baltimore, and so forth.

And without those labor protective provisions, going back 10 years ago, I do not think any of those people could afford to pick up their roots like they did and move without such protection.

The cost—I administered that cost every day from my office as airline coordinator on behalf of the machinists. We have realized 10 mergers within our organization, going back to the fifties. We are probably more experienced than any other labor organization involving mergers, because of our size, being the No. 1 union within the air transport industry.

And I think it is a big fallacy, Senator, on what they are trying to put forth as facts, that the cost of the Allegheny-Mohawk—I will take a more recent one, the Republic-Hughes Air West. Not too long ago that was merged, 2 years ago approximately. If you read the record, and I am quite sure you did, you will find that there was nobody afforded dismissal allowance on the carrier under the labor protective provisions, which is a big cost item, the reason being the carrier had comparable positions for those employees as they put the two companies together.

And you will find that it is very minute, such as maybe one of our senior lead mechanics or inspectors will maybe get downgraded to a mechanic's position within that merged company and he will get the difference in rates of pay, which is minor.

However, there is much savings to the carriers. They are the ones that go for the mergers, the acquisitions, not these unions sitting around this table. They elect to put it together and they benefit probably more than the employees, because you do not need to look at services on two carriers you are putting together, like in my old case, and you eliminate them.

And, of course, there comes out profits if it is a happy marriage there, and, of course, you end up with a good carrier. Pan Am-National was pointed out here. Yes; we used to represent the National Airlines people. We lost 1,500 people through that merger. And I can understand what Mr. Genoese was going through in trying to integrate that seniority on that carrier.

Which leads me to my last point—integration and seniority, one of the most important items in a merger, but I see it being fluffed off by ATA, who in my opinion has never been involved in merging seniority lists. I have, along with the rest of these reps at the table. And it is an utmost important item when you talk of senior persons surviving through a merged carrier.

I listened to TWA's Mr. Meyer sit here today, who I know has had no experience in merging seniority lists, because our district represents 14,000 people on TWA Airline, and, of course, the only thing he ever witnessed was that route swap and he never got involved himself. However, I think it is important that Allegheny-Mohawk stay intact for the benefit of the air transport industry or I think we are going to have total chaos, and that is what I am appealing to Congress for on behalf of the machinists and the rest of these unions.

You are going to have total chaos putting these carriers together in the future because of what Congress did in the form of deregulation, and we are suffering enough right now. And to lose this further benefit that we have enjoyed for 30 years I think would be improper. Thank you.

Senator KASSEBAUM. Thank you.

Mr. O'CONNELL. Madam Chairman, my name is Frank O'Connell. I am the international vice president and director of legislation for the Transport Workers Union, and I am representing my international president, William Lindner, who could not be here today but did want to be here.

As one international union representing some 30,000 to 35,000 airline employees, we opposed deregulation, the Aviation Deregulation Act of 1978. We opposed it from the very beginning, along with all of the other airline unions and with the airline carriers themselves. And we oppose it today.

And as a solution to the whole problem we would recommend and have recommended to the House committee and to the chairman of the committee that the Aviation Deregulation Act be abolished and we go back under a regulation system.

I would like to, Madam Chairman, compliment you on your leadership in extending and working out an agreement to extend section 408 for another 2 years, which I understand is now an amendment to the war risk insurance bill, which will continue us under the Civil Aeronautics Board for—and the labor protective provisions—for an additional 2 years.

In the interim time, perhaps we can work out legislation that will continue as a philosophy of the Board the right to present our case before the Board on imposing labor protective provisions. However, I did not know about this decision of the CAB in the case of the Eastern-Braniff case which the Board has handed down here the day before yesterday.

But let me just cite a couple of examples in opposition to what the CAB has said. The CAB said in this case that we decided not to impose LPP's on the interim agreement because the risk imposed by an immediate Braniff pullout from South America outweighed the possibility of labor strife. That is the most untrue statement ever written.

Let me tell you about Braniff and Eastern-Braniff. Eastern Airlines took over the Braniff South American airline routes without employing one single employee of the former Braniff work force, but they did pick up all of the South American employees and are working them, especially the flight attendants that were Braniff employees in South America. They are paying Braniff employees, the former Braniff employee flight attendants, one-third of what they are paying under the contract that we have with Eastern Airline representing Eastern Airline flight attendants.

We are in court in New York, in the Brooklyn District Court, and we have just won an opinion, a decision from the court, that Eastern Airlines has violated our collective-bargaining agreement by refusing to allow one U.S. flight attendant to fly any of Braniff routes into South America without—and that, of course, case has cost us now in the neighborhood of $180,000 to win, and it is now on appeal and it will be on appeal for years and years.

And the former Braniff employees, 8,500 of them, are out on the street. The Eastern Airline is using foreign nationals on the foreign routes and not one U.S. citizen flight attendant, that we represent on Braniff Airline, but are represented by another international union, has been denied a job on taking over these routes.

Mr. Meyer spoke about the Pan American-TWA route case. We represented the Pan American, all of the Pan Am ground forces in that, and he cited a cost of some $2 million in labor protective provisions in the takeover of that case. Let me just—and I have no doubt but what that figure is correct.

But what he did not say is that when Pan Am and TWA were granted the swap of those two routes that all of the employees in Paris and all of the employees in Rome, former employees of—and in that route swap Pan Am got out of Paris and TWA got out of Rome. And in those two route cases Pan Am is today paying for the flight attendants and the ground people that were on their payroll in Paris full salary, and will have to pay it for the rest of those employees', former employees' lives under French law.

And the same thing is going on with the former TWA employees in Italy under Italian law, and TWA is paying those former employees in Italy that they no longer use, that Pan Am did not pick up. And that is a cost of, is a major cost of the labor protective provisions that Mr. Meyer spoke about here this morning.

Madam Chairman, without reverting back to a regulated industry and without Congress enacting this legislation that provides labor protective provisions, there will be nothing but chaos down the road and the American citizens that have been—that are being laid off, such as in the case of Braniff Airlines, without any protection for a job, is something that Congress itself imposed upon the employees of this airline industry when it passed the Aviation Deregulation Act.

My time is probably up, but let me if I may impose upon you, Madam Chairman. I would like to cite one or two other cases. Delta Airlines merged or took over, acquired Northeast Airlines. We represented the flight attendants on Northeast Airlines, some 1,100 to 1,200 flight attendants at that time.

Delta Airlines had a work force of some 5,000 flight attendants. When Delta acquired Northeast Airlines and we attempted to work out an integration of the seniority lists between Delta and Northeast, Northeast told us that we were no longer the representative of the Northeast employees and that Delta, where it was a nonrepresented work force, that they would work out the labor protective provisions, and the former Northeast Airlines was then relegated to wherever Delta felt that they should fit into a seniority list.

A group of Northeast flight attendants then had to get together and get an attorney, because TWU was not recognized by Delta, and had to go to the CAB and get the CAB to impose the integration of the seniority lists on Delta Airlines. And the CAB, through the arbitration process, protected the 1,500 Northeast, former Northeast flight attendants.

And as recently as this past week, Pan American World Airways has now given notice that they will lay off 5,000 employees in the near future, and just this week they notified us that they have—that they are not able to continue payments into our pension program to the tune of $134 million which is due on September 30 this year. And they have gone to the Internal Revenue Service to defer that payment and amortize it over the next 15 years.

What it means to me is that Pan American is in bad trouble, that other airlines are going to be picking up, Pan Am is going to become another Braniff in the not too distant future, and we are going to have another Braniff, with the Pan Am employees out there, with other airlines gobbling up their routes, and the Pan American employees will have no, absolutely no protection when the other carriers acquire these routes.

But the same has happened, when American picked up the Dallas-Fort Worth-London route. They did not pick up one employee from American—from Braniff Airlines. When Continental picked up the west coast to Caracas, Venezuela, they did not pick up an employee of Braniff. And the Braniff employees that worked for 8,500 years—I mean 8,500 employees of Braniff that worked for years to develop that airline, which destroyed itself through the Aviation Deregulation Act in my opinion, which was fostered on us by this Congress—it is a sad commentary.

And this Congress, which did pass the Aviation Deregulation Act, should impose labor protective provisions on these carriers, because what we have—we are only seeing the tip of the iceberg in the air transport industry in my opinion.

And I support the legislation that Senator Kennedy has introduced, that our attorney Mr. Mahoney has recommended. But I would like to—as one international union, we would like to go back to a regulated industry, because we have not even begun to see what is going to happen to this transport industry in terms of unrest, in terms of failures and bankruptcies and what have you.

And we did not ask for it. We fought it, but it was imposed upon us, and now we ask that you impose the labor protective provisions on the airlines to protect the employees that are being laid off and their companies going out of business.

Thank you, Madam Chairman.

Senator **Kassebaum**. Thank you, Mr. O'Connell.

I was not in the Congress that passed the Airline Deregulation Act. I have been here and gone through rail deregulation, trucking deregulation, and I served on the Banking Committee in the last Congress when we had the financial deregulation.

And I am amused when I go home and everybody says all they want is Government off their back, and yet when we try and get the Government out of the way then everybody is not really just all that sure. I am amazed myself that airline deregulation ever passed, from all of the people I have heard who have complained about it and say they opposed it. It is amazing to me that it got through.

And as I say, all of the various areas that we have deregulated now; losing the protection and the security that was there over a number of years does cause problems. I, as I mentioned earlier, am very concerned about the thousands of workers that have been laid off in the aircraft plants, and there is not a lot of protection for them, nor is there for the small industries that do the contracting work for the aviation industry. And that worries me just as much as how we look to protection for employees of the airlines.

I would also, Mr. O'Connell, like to respond on your mentioning the Braniff-Eastern case, because I asked Chairman McKinnon when he was testifying how soon the CAB would be ruling on a decision there and he said it would probably be April. And I think what you are referring to is the Board order merely setting forth the issues for that hearing, so that all parties concerned would be knowing what the Board would be looking at at the time that they were making a decision.

Mr. O'CONNELL. You are absolutely correct, Madam Chairman. This is a decision of the Board in setting forth the interim agreement. We do have three cases before the Board and we have petitioned. We will be a party to all three cases seeking to impose, on behalf of the Board, impose labor protective provisions. In the meantime, three carriers are operating Braniff's routes and not one Braniff employee was guaranteed a job with either of those three carriers.

As an international officer of an international union, it is our position and the position of the international union that those former Braniff employees should have a crack at flying routes that was picked up by these other three carriers.

You will also note, Madam Chairman, that American Airlines just this past week has almost decided to discontinue flying the east coast-west coast runs any more. It was a very lucrative run and they, as a result of deregulation, are getting out of the market. When aviation deregulation was first proposed by Senator Kennedy and by some of the other Senators, Senator Cannon and so forth, it was—one of the major reasons for imposing—for enacting that act was that it would provide low-cost fares such as were being offered by Southwest and by PSA and Air Capitol and what have you.

As of today you can fly from Washington to New York on Eastern Airlines for $65 as the primary rate, and today to fly from—and that is a route of 225 miles. Today to fly from Washington to Philadelphia, a route of 100 miles, is $79. To fly from—there were a number of airlines flying out of MacArthur Field in New York. The rate, the fare, was between New York and Boston, was in the neighborhood of $50. Today from MacArthur Field to Boston, it is now $79.

So that while some of the—in the major, most lucrative markets, while some of the airline fares have come down and seven airlines are competing now from New York to California, none of them are making any money and all they are doing is—what they have done is that the passengers that were being carried by three airlines are now being carried by seven airlines, and they are fighting amongst themselves as to who can fly at the lowest fare, and to the detriment of the entire airline industry in our opinion.

You just cannot fly—for instance, American Airlines one day this week was with a 747 from Dallas-Fort Worth to Hawaii, a new route just instigated under the deregulation; had 19 passengers on a 747 and canceled the flight and put the passengers on a 727 to Los Angeles, and then on to Hawaii.

And this is what is happening to the air transport industry as a result of the Deregulation Act, and the employees are suffering.

Senator KASSEBAUM. Well, that is a subject almost for another full day's hearing, which I think that we would be well served to have in the near future, as we analyze deregulation, its strengths and weaknesses.

Mr. Mahoney, I would like to ask you or anyone else who would care to respond regarding the codification of the LPP's, is it that you believe it lends security and would ultimately resolve labor unrest to have that codified, rather than taking the risk of going to the negotiating table?

Mr. **Mahoney**. Well, it certainly would—to answer your question in one word, yes. It would tend, as the Supreme Court has found and the other courts have found and the CAB used to find, it would tend to prevent interruptions to commerce and to promote efficiency when the employees who are to be hurt know that they are to be protected in all cases where that protection is justified.

The problem with negotiation, even for the two-thirds of the industry that is represented, is that when you sit down to bargain in an individual case, by the time that you are not even halfway through your bargaining the case is over. The carrier is on its way to doing whatever it is going to do, or the carrier is in the merger. The employees have been hurt, and protection after the fact is no protection at all.

And that is what will happen, and the CAB in the TXI-Continental merger case found that to be the case. They said that they were imposing it there because labor and management have not had enough time to arrange for alternative solutions to the problems which are solved by Allegheny-Mohawk, and so they imposed Allegheny-Mohawk.

The reason I cited that case a moment ago, I might say, this order of the CAB which came out the day before yesterday, was merely to show the reverse in philosophy that has taken place in the CAB, partially through deregulation, partially through changes in its membership, where they used to say that, "Where benefits to stockholders and the public would be at the expense of employees, it is only equitable that in such circumstances the hardship to employees should be mitigated by provisions for their benefit," to a point where LPP's are saying that now they can be costly and cause substantial difficulties in integration.

Senator **Kassebaum**. Well, I think partially I would say, not knowing really what the CAB's philosophy would be, but it is not just deregulation, but really the particular climate that we are in today and the economic situation. And I am a little puzzled, because we have heard much this morning about the victimization due to mergers, and yet it seems to me in the case of the airline industry, anyway—and I think when Senator Goldwater mentioned the Martin Marietta and Bendix and Allied merger, I personally think that is a tragedy and that it is almost a game that is being played, and to no one's benefit. But that is another subject.

But when we speak of the mergers affecting the airline industry today, we are actually talking about cases, it seems to me, where an airline is facing financial crisis and has really not had much of an option but to merge. And it seems to me that actually there would be far greater unemployment if that option were not open. Now, I really do not—because in studying the various cases that are before us in the last several years, it seems to me that has basically been the case.

Mr. **Mahoney**. Well, my only answer to that is that where—and this has occurred many, many times over the years, even before deregulation, where you had one carrier under stress and another carrier was picking it up, or maybe both carriers were in semidistress and they were trying to get together to make one single strong carrier. But in all of that time and all of those cases, Allegheny-Mohawk or its predecessors has never been given as a reason that deterred in any way the culmination of the merger or prevented the merger in any way.

It is only since deregulation that we have been hearing these statements, and then not in evidence. They have had the opportunity to do it and they have refused. Not in evidence where they can be cross-examined and materially examined, but only in the newspapers and maybe before congressional committees, where "they are costly and they deter things." It just does not happen.

Senator **Kassebaum**. And I do not know that I have heard necessarily all that much this morning here that Allegheny-Mohawk in and of itself on the part of some is at fault; that it is the codification of it and the extension of it into other areas that have before not been contemplated.

Mr. **Mahoney**. I agree. I think with you, and I think probably with the folks on the other side, when they were saying, we sell an airplane and we are going to have to figure out the number of people that are going to have to go with that airplane and perhaps arbitrate that question about how many people that have to go with that airplane—that is not what we have had in mind when we are talking about that.

What has happened, though, as I think one of the witnesses mentioned, is abuse, where after mergers, and sales—that is, sales of airlines and acquisitions of airlines, leasing of entire airlines—what has happened, though, is that where you have abuses, where you sell pieces and bits here and there and all of the employees are hurt or a substantial number of the employment force is hurt, and there is no protection for them. That is the problem we have.

But where you have a straight sale of a piece or two or three or four pieces of equipment as a straight sale, that has never bothered us. That has been done. That has never even been covered before. So that really does not bother us.

But route swaps have been covered and the CAB has protected them, and we would like that protected. But it is in large areas where forces of employees are just dropped out because of what they do, that is what we are looking for the protection for, not adjustment, so to speak.

Senator **Kassebaum**. Thank you very much. We appreciate your patience in waiting and appreciate your suggestions and participation.

Mr. **Mahoney**. We thank you for your patience.

[The statement follows:]

STATEMENT OF BROTHERHOOD OF RAILWAY & AIRLINE CLERKS, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AND TRANSPORT WORKERS UNION OF AMERICA

Madam Chairman and Members of the Subcommittee: My name is William G. Mahoney. I am a lawyer with the firm of Highsaw & Mahoney, P.C., with offices in

Washington, D.C. I am appearing here today on behalf of the Brotherhood of Railway and Airline Clerks, the Flight Engineers; International Association, the International Association of Machinists and Aerospace Workers, and the Transport Workers Union of America. These organizations represent most of the more than 300,000 employees of all crafts and classes employed on the air carriers of this nation. On behalf of these organizations and their members, I would like to express our appreciation for this opportunity to state our concerns on a matter of vital importance to them and to the stability and safety of air travel in this nation.

We appear here today to voice our position on the need for continuing in effect a program of employee protection in air transport merger and similar cases and to express to you our conviction that Section 43 of the Airline Deregulation Act must be amended. The sunset of the CAB would effectively eliminate that form of employee protection known as the "Allegheny-Mohawk Conditions" from airline merger and similar cases. As you know, Section 408 of the Federal Aviation Act vests the Civil Aeronautics Board with the discretionary authority to approve airline mergers "upon such terms and conditions as it shall find to be just and reasonable" and has resulted in the imposition of employee protective arrangements in every airline merger case since 1952.

The devastating impact of airline deregulation on the welfare of the employees of the air transport industry is evident in numbers alone. Of the 88,000 Machinists working on airline carriers, some 9,000 have lost their jobs because of the effects of deregulation; thousands of other employees in all classifications have lost work or been forced to move by airlines' elimination, transfer and creation of alternate hub cities throughout the country. Many more emloyees will lose their jobs or be forced to relocate because of the many airline mergers which are clearly on the horizon. Such employee hardship has a demoralizing effect upon all employees of this industry, and therefore upon the basic efficiency and safety of air transportation.

Congress was well aware that this could happen when it enacted the Airline Deregulation Act of 1978. To ameliorate the negative economic impact on airline employees and their families, Congress provided the labor protections of Section 43. As the Senate report on the Deregulation Act states:

"* * * Congress, on behalf of the American people, must *insure* that the benefits to the public which result from its decision to alter substantially the regulation of air transportation are not paid for by a minority—the airline employees and their families who have relied on the present system * * *.

Congress, [in the past] having acted to prevent the normal free market evaluation of the industry, *now has a duty* to the industry *and its employees* which would not exist if such action had not been taken". (Emphasis supplied.)

Report of the Committee on Commerce, Science and Transportation on S. 2493, S. Rep. No. 95-631, 95th Cong., 2d Sess. 114 (1978). This Congressional sensitivity to the need to protect effectively employees affected by the Act was consistent with the historic concern that Congress has demonstrated for the welfare of employees in the transportation industry.

At the outset we must emphasize that employee protection in the air transport industry should be continued by statute because it has been an aspect of our national transportation policy for over 30 years which will be eliminated by the Airline Deregulation Act of 1978, unless Congress acts to keep it in being.

The formula evolved through 30 years of Civil Aeronautics Board cases should not be modified by legislation. The C.A.B. first developed and imposed this formula in 1952 in the *Braniff-Mid-Continent Merger* case and with only minor modifications has continued to impose it in every merger and similar case to come before it since that time (with the single exception of one small control case in 1978).

In each merger case heard by the C.A.B. for the past 30 years, the air carrier applicants and the employee representatives had ample opportunities to seek changes in the protection formula. In most cases, no changes were sought by either side. When minor modifications were desired due to special circumstances, they were sometimes granted by the C.A.B., sometimes not. The significant fact is that in over 30 years the C.A.B. has not made any significant change in the formula now known as Allegheny-Mohawk.

A refusal by the Congress to continue that protection for employees would constitute a significant reversal of our national transportation policy. Action by the Congress altering the formula historically imposed in merger-type cases would constitute a material change in our national transportation policy. For this reason, it would seem that in a balancing of evidence and equities, the opponents of continuing employee protection in the air transport industry in the manner in which it has been provided in the past have a heavy burden to sustain—and they cannot do so.

Since 1952, recognition of the Board's implicit power to impose conditions "in the public interest" which will lessen the adverse impact of a merger upon employees has been regarded as one necessary to the performance of the Board's duty under Section 408.

In January, 1952, the United States Court of Appeals for the Ninth Circuit issued its opinion in a case upholding the right of the C.A.B. to impose employee protective conditions retrospectively in a route transfer case. In the course of its opinion, the Court said (194 F. 2d 211 at 213-214):

"In *United States* v. *Lowden*, 308 U.S. 225, 60 S.Ct. 248, 84 L.Ed. 208, the Court held that comparable provisions of the Interstate Commerce Act authorized the Commission to impose labor protective conditions upon railroad mergers and consolidations notwithstanding the absence of express statutory authority. The Court stressed the national interest in the stability of the labor supply available to the railroads. Among other things it said, 308 U.S. at page 238, 60 S.Ct. at page 255: "we cannot say that just and reasonable conditions imposed on appellees in this case will not promote the public interest in its statutory meaning by facilitating the national policy of railroad consolidation; *that it will not tend to prevent interruption of interstate commerce through labor disputes growing out of labor grievances, or that it will not promote that efficiency of service which common experience teaches is advanced by the just and reasonable treatment of those who serve.*" [Emphasis supplied by the Court of Appeals.] The reasoning is in large part equally applicable to interstate carriage by air. Congress has recognized the similarity of the labor problem in the two forms of transportation by specifically making the Railway Labor Act applicable to air carriers."

The extensive history of legislation regulating the relations of airline employees and carriers, evidences Congressional awareness that "just and reasonable" treatment of airline employees is not only essential to the maintainance of service uninterrupted by labor disputes, but that "it promotes efficiency which suffers through the loss of employee morale when the demands of justice are ignored." (Cf., *U.S.* v. *Lowden*, 308 U.S. 255 at 235-236 (1959)). No serious effort by direct legislation has ever been made to withdraw or restrict the authority of the C.A.B. to impose employee protective conditions. No such effort was made during the Congress' consideration of the bills which became the Airline Deregulation Act of 1978. That result is being achieved, however, by indirection: by transfer of § 408 authority to the Department of Justice and the sunset of the C.A.B. As noted by the Court in the *Western Airlines* case quoted above, the historic protections accorded airline and railroad employees adversely affected by mergers are based upon the same principle. Now both industries have been deregulated and one striking disparity in their respective deregulation schemes has emerged: with the deregulation of the railroad industry under the Staggers Rail Act of 1980, the protective conditions for employees adversely affected by mergers were strengthened; whereas, the protections provided employees in the Airline Deregulation Act are to be eliminated completely.

The proposed abandonment of a policy of over 30 years standing to assist employees victimized by mergers and consolidations we believe to be ill-advised. Almost without exception in merger cases, the carriers themselves have actively sought the imposition of labor protective provisions. For example, in the *Republic-Hughes Airwest Acquisition* (CAB Docket 38086), the Vice President of Industrial Relations for Republic Airlines, Gowan J. Miller, testified that labor protective provisions were not only "fair" to his carrier and to the employees of the affected companies, they were "absolutely necessary" if there was to be a successful integration of employees in the air transport industry. Mr. Miller further declared that the key to the labor protective provisions is the requirement for "fair and equitable" seniority list integration requiring the carrier to negotiate the intergration with the representatives of the affected employee groups. This is backed up with a provision for binding arbitration of seniority lists if negotiations fail. Mr. Miller concluded his testimony as follows:

"We may all tend to take labor protective provisions for granted at times, but it is useful to step back occasionally and consider what would happen if they were not there—and also to evaluate the advantages of their application. *Everyone can be thankful that the provisions are there and will be continued in the future.*" (Emphasis supplied.)

(Mr. Miller's testimony is attached to this statement as Appendix A to Exhibit 1.)[1]

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[1] The exhibits referred to in this statement have been retained in the committee files.

As the Subcommittee knows, seniority is critical to rates of pay, job assignments, and most other working conditions in the airline industry. And the integration of seniority lists is central to any successful airline merger. With the C.A.B.'s Allegheny-Mohawk labor protective provisions, or those regularly imposed by the I.C.C. in railroad mergers, a framework is established to assure the quickest and fairest possible integration. Absent protective provisions such as those embodied in the I.C.C. and C.A.B. formulas, that integration could entail considerable delay and even strikes following exhaustion of the procedures of the Railway Labor Act. In this sense, the continued viability of labor protective provisions are indispensable to the maintenance of an adequate and efficient airline transportation system.

Mergers, acquisitions and route transfers such as occasioned the Court's decision in the *Western Airlines* case discussed above have been an almost daily fact of life in the air transport industry throughout its existence. Since 1952 they have been accompanied by formulas substantially identical to "Allegheny-Mohawk". In each of these cases, the carriers involved could have opposed the imposition of the formula on the ground that its cost would be so great as to significantly lessen to them the value of the pending merger, acquisition or route transfer. They did not do so.

Following enactment of the Deregulation Act, some carriers began to complain that the cost of "Allegheny-Mohawk" was burdensome and, in any event, such protection was inconsistent with the philosophy of deregulation. Indeed, the C.A.B. opined that the Congress had made a deliberate decision to reverse its policy and in 1979 informed the air transport industry that it was changing its policy of routinely imposing employee protective conditions in merger cases, and would "in the future" impose such a formula "only if and when the Board determines that it is required by special circumstances." ("Special circumstances" have been found to exist in all succeeding cases.) The C.A.B. informed the parties in the *Texas International-Continental Acquisition case* (C.A.B. Docket 39285) that it wished to be informed of the costs and benefits of "Allegheny-Mohawk". The management of the industry now had its chance in an atmosphere most favorable to it to demonstrate the burdens, if any, imposed upon it by "Allegheny-Mohawk".

The industry refused to respond so the unions (including the IAM through my law firm) sought to obtain that information from the industry by service of interrogatories upon individual carriers that had been involved in cases in which "Allegheny-Mohawk" had been imposed. Those carriers refused to answer the interrogatories and sought to quash service upon them. After appeals from the Administrative Law Judge to the Board resulted in a Board order directing them to answer, they did so Their answers are attached to this statement as Exhibits 1, 2, 3, 4, and 5, respectively. They make quite clear that the cost to a carrier of "Allegheny-Mohawk" measures against the profits gained by the transaction upon which it is imposed are insignificant. Certainly no one reasonably can argue that the costs of moving and pay reductions or pay loss are insignificant to the individual employee who suffers them; indeed, they can be catastrophic.

The Board itself—not to mention the United States Supreme Court—recognized the justice in providing some share in a carrier's savings with those who directly provide that savings to the carrier by loss of jobs, displacement and relocation. In *United-Western,* Acquisition of Air Carrier Property, 11 C.A.B. 701 (1950) the Board recognized that where the benefits to the stockholders and the public will be at the expense of employees, "it is only equitable that in such circumstances the hardship should be mitigated by provisions for their benefit." 11 C.A.B. at 708. To precisely the same effect are decisions of the Supreme Court and the Interstate Commerce Commission in dealing with railroad employees affected by similar transactions. Even this Committee in addressing the effects upon employees of another aspect of the 1978 Deregulation Act[2] recognized the justice and equity of protecting employees affected by its acts:

"* * * Congress, on behalf of the American people, *must insure* that the benefits to the public which result from its decision to alter substantially the regulation of air transportation are not paid for by a minority—the airline employees and their families who have relied on the present system * * *.

"Congress, [in the past] having acted to prevent the normal free market evaluation of the industry, *now has the duty* to the industry *and its employees* which would not exist if such action had not been taken". (Emphasis supplied.)

We must not lose sight of the fact that the "Allegheny-Mohawk" provisions do not provide benefits only to employees. To the contrary, as we have noted above, they require the integration of seniority rights of employees involved in a fair and equitable manner, and if the carrier and its employees disagree, they provide that the dispute must be resolved by arbitration. That provision modifies the rights of employees under the Railway Labor Act, for seniority integration is a "major dispute" under the Railway Labor Act which cannot be resolved by arbitration unless both labor and management agree to forego their right to economic self-help once the "long, drawn out procedures" of the Act are exhausted. The CAB's protective conditions require the carrier to provide monetary protections to adversely affected employees partly as the price for that modification of Railway Labor Act rights. But even that cost provides a high return to the carrier because it enables the merged carrier to integrate the operations of its predecessors with the least amount of employee friction which obviously would otherwise be present if the employees believed that they could be cast aside by the new company without any acknowledgement of the contributions made by their past service or the financial contribution made by the loss of their jobs.

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[2] The effects upon employees and upon "Allegheny-Mohawk" of the transfer of Section 408 responsibility to the Department of Justice in 1983 and the demise of the C.A.B. was not considered by the Congress.

Because of the value to the carriers of the integration requirements of "Allegheny-Mohawk" as well as the relatively insignificant cost of its monetary protections, merging carriers have all argued to the C.A.B. that "special circumstances" existed in each of their cases for the imposition of "Allegheny-Mohawk".

Some have contended that consistent with the spirit of deregulation, development and application of a formula of employee protection should be left to the parties to resolve at the bargaining table. A clear decisive refutation of the validity of such a contention is demonstrated by the fact that the "special circumstances" found by the C.A.B. to require imposition of "Allegheny-Mohawk" have consisted primarily in the recognition by the Board and all parties concerned "that labor and management had not had sufficient time to arrange for alternative solutions through collective bargaining [for the labor problems caused by mergers, etc. but resolved by "Allegheny-Mohawk"]. *Texas-International-Continental Acquisition* case, CAB Order 81-5-151, served May 29, 1981, at page 2. By the time any arrangement could be agreed upon, the merger, etc. would have become an accomplished fact and employees would have been compelled to make irrevocable decisions as to their future without knowing what their rights might be as provided in a future protective formula. For a protective arrangement to be effective it must be in place before the fact.

With the transfer of Section 408 authority to the Department of Justice on January 1, 1983, the policy of protecting employees will cease. It is imperative therefore that Congress act to continue that policy of employee protection which has been in effect for over 30 years.

No evidence exists of harm having been caused to any carrier during these decades by "Allegheny-Mohawk" or its predecessor formulas. We recognize that at least two otherwise respectable newspapers have carried editorials and "news" stories regarding "$90,000 ripoffs" of carriers by "Allegheny-Mohawk". These stories resulted from statements made by OMB Director Stockman and the President of the Air Transport Association, Mr. Paul R. Ignatius, which were not based on fact or history but upon hypothesis. (Copies of these statements as well as a reply of Wm. W. Winpisinger are attached to this statement as Exhibits 6, 7 and 8, respectively.) If there were even the slightest chance that Mr. Stockman or Mr. Ignatius could be correct in their baseless assertions regarding the cost of "Allegheny-Mohawk", it seems reasonably safe to conclude that the CAB would have been deluged by the Air Transportation Association and individual carriers with such evidence when they were invited to do so by the C.A.B. in the *TXI-Continental* case. They remained silent and even fought being required to testify, perhaps because they knew they really had no factual case to make on the real cost of "Allegheny-Mohawk". In any event, no factual case has ever been made that "Allegheny-Mohawk" has been a financial burden to any carrier or has ever resulted in the unjust enrichment of any employee. Hypotheses are not facts and indeed are particularly worthless here, considering the factual history of "Allegheny-Mohawk" and its predecessor formulas. It is sad to see eminent newspapers taken in by such useless and misleading information.

To conclude on the subject of "Allegheny-Mohawk" we wish to emphasize the pressing need to enact into law protection to air carrier employees immediately and without change from that traditionally provided employees in "Allegheny-Mohawk". No evidence exists to support a change in congressional policy; no evidence exists to support a modification of the traditional "Allegheny-Mohawk" formula; no evidence exists to support a limitation regarding the life of any part of that formula. On the other hand, as we have noted earlier in this statement, the record demonstrates "Allegheny-Mohawk" should be required in all future merger and similar cases.

As noted at the beginning of this statement, the representatives of the employees of this industry know that since 1978 a great many more of these employees have been hurt by the deregulation of the industry than by merger, acquisition or route swaps.

The employee protection which this Committee (in its Report on the bill that ultimately became the Deregulation Act) intended employees to be accorded does not exist. It is no answer to say that the fault lies with the Carter-Reagan Administrations for failure to implement that law. The fault lies with the law itself and the unique, insuperable obstacles to implementation contained in that law:

(1) 7½ percent of all employees of a particular air carrier must be deprived of employment because of deregulation in a 12 month period before protective becomes effective.

(2) C.A.B. has to determine when 7½ percent is reached and whether deregulation was the major cause.

(3) Dept. of Labor has to issue detailed regulations implementing general provisions of the act.

Even if the C.A.B. and Department of Labor had acted immediately, years of protracted litigation would have followed before anyone would have been protected. At the present time the C.A.B. is conducting hearings on the question of whether deregulation was "the major cause" of the enormous layoffs on six airlines [3] in the industry. As might be expected, the Department of Transportation has taken the position that deregualtion was not the major cause of any of the layoffs. More significantly perhaps was the public comment of the Chairman of the C.A.B. immediately following news of Braniff's bankruptcy to the effect that deregulation had nothing to do with Braniff's problems. In the meantime, those employees who, indeed, were adversely affected receive no protection whatever.

The four year existence of these obstacles in the protection scheme devised by the Congress have proved to be unjust and contradictory of Congress' pledge through this Committee "to insure that the beneifts to the public which result from its decision to alter substantially the regulation of air transportation are not paid for by a minority—the airline employees and their families * * *." For four years and into the foreseeable future that minority has been and will continue to pay for what public benefits deregulation may have achieved. No justification was ever proposed for including those obstacles into the law; they have proved unjust; and, they should be removed. We support S. 2666 which does precisely that and only that as well as to reserving "Allegheny-Mohawk".

Thank you.

Senator **KASSEBAUM**. I am sure the last panel really wondered if we would ever get to them. The second panel is Mr. Michael Derchin, vice president of First Boston; and Prof. Wallace Hendricks, University of Illinois, Institute of Labor and Industrial Relations.

STATEMENT OF MICHAEL W. DERCHIN, VICE PRESIDENT, FIRST BOSTON CORP.

Mr. **DERCHIN**. Good afternoon, Senator. I am here as an airline analyst for the First Boston Corp.

Senator **KASSEBAUM**. Have you been here since the beginning of the hearing?

Mr. **DERCHIN**. Yes. I found it interesting.

There are two subjects that I would like to discuss very briefly and then open it up to questions: First, the present financial condition of the airline industry; and second, the potential impact of labor protective provisions on the industry.

The airline industry is clearly in financial disarray. Over the past 3 years huge losses have been sustained and the balance sheets of most airlines have deteriorated badly. The culprits include a number of very specific problems:

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[3] Airlift International, Air New England, Braniff, Continental, Trans World and United.

First, very weak demand due to the recessionary conditions in the economy since late 1979. This is one of the longest recessions we have had since the depression.

Second, skyrocketing fuel prices—a situation where we had a doubling of fuel prices in a very short period of time, which was completely unexpected.

Third, record high interest rates. Nobody ever anticipated interest rates up in the 20-percent range.

Fourth, the PATCO strike and its aftermath, which has disrupted the efficiency of airline operations.

And fifth, fare wars, which have resulted primarily from excess capacity and poor traffic within the industry.

Now, after 40 years of tight regulation, many of the airline managements, in our opinion, were ill equipped to deal with these difficult problems within a deregulated setting. The consequences of some very poor strategic decisions have been demonstrated by the Braniff International case.

Exacerbating the current problems is the need for many airlines to reequip into newer and more efficient aircraft in order to both replace aging and inefficient fleets, as well as to permit continued expansion. At present most airlines are weak credit risks. There are only three airlines in the industry that are investment-grade quality, which is rated as Baa or better. This is an important point since most carriers are competing for funds not only with each other, but with companies in other, less troubled industries, and only those companies of investment grade quality really have access to the largest pools of available investment funds.

Traditionally, to compensate for this, most airlines have financed their equipment purchases by securing debt. That is, they have pledged equipment through either straight mortgages or through equipment trust certificates. In 1982 the value of equipment security was called into question with the bankruptcies of Braniff International and Laker Airways.

These failures demonstrated for the first time to the financial community that, unlike selling a small number of used aircraft on a very controlled basis and at market prices, if you were forced to sell a large block of aircraft at one time there was a real risk of lack of security and lack of coverage of debt.

Placing labor protective provisions on the various intercarrier transactions, such as mergers, acquisitions, route transfers, as we discussed today, will in our opinion compound an already serious situation. With labor protective provisions, the acquisition of distress equipment would entail the added cost of protected labor. Since the inherent value of the equipment is unchanged, buyers will either pay less for the equipment or they are not going to buy at all. They are just going to say, let us wait for the company to go out of business and then we will buy the equipment at lower prices.

Clearly, with labor protective provisions, then, mergers, acquisitions, and route transfers—which have been traditional ways that airlines have gotten themselves out of trouble—would become less attractive ways of relief for struggling airlines. And this is an extremely important point because it is a very real short-term problem.

Now, if airlines become an industry with unique labor protective provisions, lenders will view them as an even greater risk and will not be as willing to lend funds in the future as they have been in the past. As a result, many of the weaker carriers will not be able to reequip, because the lenders will demand more equity, less debt, and attach higher interest rates because of the higher risk, and the combination of all of these would preclude such carriers from acquiring newer and more efficient aircraft.

Unable to raise the capital, the weakest carriers will be at a greater competitive disadvantage compared to the stronger ones and they will be driven out of business. That is why, rather than calling these labor protective provisions, we would categorize them as labor destructive provisions, since they would deny access to the capital markets to all but the strongest airlines and result in the loss of tens of thousands of jobs.

Furthermore, new entry into the business would be inhibited by the higher risks in this industry, and this avenue of employment, as demonstrated by Mr. Burr from People Express, would also be cut off.

So in conclusion, we believe that these proposals are very shortsighted. And if they are implemented will actually have the opposite of the desired effect, which is really less job protection and not more.

[The statement follows:]

Statement of Michael W. Derchin, Vice President, First Boston Corp.

Thank you for inviting me to be here today. I have a brief statement to make and I'll be happy to answer any questions.

I'd like to discuss the present financial condition of the airline industry and the potential impact of labor protective provisions on the industry.

CURRENT FINANCIAL CONDITION OF THE AIRLINE INDUSTRY

The airline industry is clearly in financial disarray. Over the past three years, huge losses have been sustained and balance sheets have badly deteriorated. The culprits include a witches' brew of problems, specifically: Weak demand due to recessionary conditions since late-1979; skyrocketing fuel prices; record high interest rates; the PATCO strike and its aftermath; and fare wars resulting from excess capacity and poor traffic.

After 40 years of tight regulation, many airline managements, in our opinion, were ill equipped to deal with these difficult problems within a deregulated setting. The consequences of poor strategic decisions have been clearly demonstrated by Braniff International's demise.

Exacerbated by current problems, is the need for many carriers to reequip into newer, more efficient aircraft in order to replace aging, inefficient fleets or to permit continued expansion. At present, most airlines are weak credits with only three being of investment grade quality (Baa or better). This is an important point since most carriers are competing for funds with each other and with companies in other industries and only those who are of investment grade quality have access to the largest pools of available investment funds.

Traditionally, most airlines financed equipment purchases by securing debt, that is, pledging equipment through straight mortgages or through equipment trust certificates. In 1982, the value of equipment security was called into question with the bankruptcies of Braniff and Laker. These failures demonstrated to the financial community that, unlike selling a small number of used aircraft on a controlled basis at market prices, large forced sales create a real risk of lack of security and coverage of debt.

IMPACT OF LABOR PROTECTIVE PROVISIONS

Placing labor protective provisions on various inter-carrier transactions such as mergers, acquisitions and route transfers will, in our opinion, compound an already serious situation.

With labor protective provisions, the acquisition of distress equipment would entail the added cost of "protected" labor. Since the inherent value of the equipment is unchanged, buyers will either pay less for the equipment or not buy at all. Clearly, with labor protective provisions, merger, acquisitions and route transfers would be less attractive avenues of relief to struggling airlines.

If airlines become an industry with unique labor protective provisions, lenders will view them as an even greater risk and won't be as willing to lend funds in the future as they have in the past. As a result, weaker carriers won't be able to re-equip because lenders will demand more equity, less debt and higher interest rates, the combination of which would preclude such carriers from acquiring newer and more efficient equipment.

Unable to raise capital, the weaker carriers will be at an even greater competitive disadvantage and be driven out of business by the stronger airlines. Rather than calling these labor protective provisions we would categorize them as labor destructive provisions since they would deny access to the capital markets to all but the strongest airlines and result in the loss of tens of thousands of jobs.

Furthermore, new entry into the business would be inhibited by the higher risks and this avenue of employment would also be cut off.

In conclusion, we believe that these proposals are very short-sighted and achieve the opposite of the desired effect, that is, less job protection not more.

Thank you.

Senator **KASSEBAUM**. Thank you.

Mr. Hendricks?

STATEMENT OF PROF. WALLACE HENDRICKS, UNIVERSITY OF ILLINOIS, INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS

Mr. **HENDRICKS**. Thank you, Madam Chairman.

The testimony which I have submitted for the record and which I would like to summarize today is based upon research which we conducted for the Department of Labor, research which I conducted last year for Texas International, and some further research which I did prior to this hearing.

The basic thrust of this research compared the working conditions of airline employees to conditions outside the industry and to the standard CAB labor protective provisions as put forth in Allegheny-Mohawk. The major points of this comparison are as follows:

First, wages and fringe benefits in the airline industry are quite high compared to other industries. In 1981 average compensation was over 60 percent higher than in other industries. What is more, our research indicated that this differential could not simply be explained by higher quality workers.

By these measures of union power—and I mean wages and fringe benefits—there is no evidence that unions in the airline industry would be at a disadvantage in bargaining over LPP's compared to unions in other sectors.

Second, comparisons of LPP's in contracts outside the airline industry with the CAB standard LPP's show that the CAB standard LPP's exceed voluntarily negotiated provisions by a large margin. The combination of all of the standard LPP's almost never exists in other industries, and when individual provisions do occur they are quite small in comparison with the standard LPP's.

For example, less than 3 percent of all nonairline contracts negotiated in 1975 had displacement, relocation, and severance provisions. This is true even when we compare standard LPP's to contracts in the steel and auto industries, which are widely accepted as having the best protective provisions.

For example, the standard CAB provisions provide 100 percent displacement allowance for all workers for up to 4 years. In contrast, the steelworkers contract with United States Steel provides no compensation for employees with less than 2 years service and 85 to 90 percent for more than 2 years service. Moreover, this displacement allowance is paid to displaced steelworkers for only 1 year.

Only 7 percent of a sample of 96 airline contracts that I looked at had any displacement allowance at all in 1978.

Finally, the current wave of concessionary bargaining has resulted in improved LPP's in a number of contracts outside the airline industry. Approximately one-half of all contracts which contain wage concessions also include job security improvements. During the same period, the airline industry has made concessions which increase productivity through relaxing work rules, but they have only rarely bargained for substantially improved job security provisions.

These comparisons lead to three major conclusions:

First, airline unions have sufficient power to bargain for LPP's which meet or exceed those in other industries if they choose to do so.

Second, faced with employment security problems, airline unions have chosen to react in a different manner than unions outside the industry. This bargaining posture is highly influenced by the possibility of legislative intervention in the bargaining process.

Third, imposing LPP's which are considerably higher than would exist under voluntary negotiation allows the union to focus its bargaining power on other issues and therefore increases its power vis a vis management.

There appears to be little justification for treating airline unions differently than workers in other industries who face similar job security problems. The imposition of the standard LPP's will create higher operating costs to the carrier, which of necessity in the new era of deregulation must be passed along to consumers in the form of higher air fares.

I should emphasize that these costs may not simply include just direct payments, but also inefficiencies which occur in an attempt to avoid LPP payments. For example, suppose that you wanted to introduce computers into your industry and the Congress required a fee of $3 million to do so. If those computers saved you $2 million, computers would not be introduced. Yet when we measure the cost of that regulation, it will be zero because the $3 million was not paid. Isn't the $2 million foregone cost saving really a cost to consumers and to society?

Employment security provisions are an integral part of our industrial relations system. Management has a clear duty to bargain over these provisions in good faith. Consistent deregulation policy would call for airline merger LPP's to be established in the same way that other LPP's are established—freely negotiated by both unions and management at the collective bargaining table.

[The statement follows:]

STATEMENT OF PROF. WALLACE HENDRICKS, UNIVERSITY OF ILLINOIS, INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS

Madam Chairman and members of the Committee. My name is Wallace E. Hendricks. I am a Professor of Economics and of Labor and Industrial Relations at the University of Illinois, Urbana-Champaign. I hold a Ph.D in Economics from the University of California at Berkeley. The testimony which I would like to present today is based on research which we conducted for the Department of Labor under two contracts between 1978 and 1981,[1] research which I conducted for Texas International Corporation (TI) for presentation on the question of Labor Protective Provisions in the proposed TI-Continental merger in the Spring of 1981,[2] and some updating of this information which I conducted prior to this hearing.

I. INTRODUCTION AND SUMMARY

In the Pan American-National Merger in 1980 the Civil Aeronautics Board indicated that it would not necessarily impose the "standard" labor protective provisions [3] (LPPs) as a condition of approval of future proposed acquisitions. The Board indicated that management and unions should bargain over these issues. However, current proposals for legislation seem to duplicate these standard LPPs. The analysis which I have conducted uses these standard LPPs for comparison purposes since I know of no other proposals.

The major points of this comparison are as follows. First, wages and fringe benefits in the airline industry are quite high compared to other industries. By these measures of union power, there is no evidence that unions in the airline industry would be at a disadvantage in bargaining over LPPs as compared to unions in other sectors. Second, comparisons of LPPs in contracts outside the airline industry with the CAB standard LPPs show that the CAB standard LPPs exceed voluntarily negotiated provisions by a large margin. Third, typical contracts within the airline industry have non-merger LPPs which are quite comparable to those that exist outside the airline industry without CAB intervention and which are modest by comparison to the CAB standard LPPs. Fourth, the current wave of concessionary bargaining has resulted in improved LPPs in some contracts outside the industry, but little change within the industry.

These comparisons led to three major conclusions. First, airline unions have sufficient power to allow the bargaining of LPPs which meet or exceed those in other industries if the unions choose to seek such provisions. Second, faced with employment security problems, airline unions have chosen to react in a different manner than unions outside the industry. This bargaining position is highly influenced by the possibility of legislative intervention in the bargaining process. Third, imposing LPPs which are considerably higher than would exist under voluntary negotiation allows the union to focus its bargaining power on other issues and therefore increases its power vis-a-vis management.

II. WAGE LEVELS AND FRINGE BENEFITS IN AIRLINES

Comparisons of average wage levels in airlines as compared to other industry sectors have found that these levels meet or exceed levels in other sectors (*see* "The Effects of Regulation on Airline Collective Bargaining" Report submitted to the Labor Management Services Administration of the Department of Labor, July 1979, table 5-20, p. 133 and 5-19, p. 132). In 1981 the average compensation per employee was $36,900 as compared to $22,200 in all U.S. industries. These differences also persist when average wages are computed by occupation *(see Ibid,* table 5-1, pp. 107-08, and supporting evidence in CAB, "Report of Special Staff on Regulatory Reform" 23-24, 154-58 (1975)). Moreover, in a recent study, "Regulation, Deregulation and Collective Bargaining in Airlines," (see footnote 4) we found that differences in labor quality do not typically explain this differential. These results suggest that union power (as measured by wage levels) is relatively high in the airline industry as compared to manufacturing industries.

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[1] See "The Impact of Regulation on the Processes and Outcomes of Collective Bargaining in U.S. Airlines" with P. Feuille and C. Szerszen, Final Report to Labor Management Services, Department of Labor, 1979 and "Bargaining Structure and Bargaining Outcomes: Determinants and Tradeoffs," with P. Feuille and L. Kahn, Final Report to ASPER, Department of Labor, 1981.

[2] See CAB Docket 39285, Exhibit TI-RT-8.

[3] As set forth in the *Allegheny-Mohawk* case CAB order Nos. 72-4-31 and 72-4-32.

While wages have typically been the focus of most studies of union power, recent studies[4] have also attempted to quantify other dimensions included in collective bargaining agreements by scoring or rating each contract provision on a scale of favorableness to the union. Provision "scores" are then summed for each contract to provide an overall measure of contract favorableness. In our recent study of airline contracts, and of manufacturing contracts covering 1,000 or more workers, we found that the average airline score was 23 percent higher than the average manufacturing score. Moreover, when manufacturing contracts are grouped by 3-digit codes under the Standard Industrial Classification Code of the Bureau of the Census, only two industries, metal cans and farm machinery, had higher average scores than airlines and one of these was almost identical to the airline score.

These two results taken together suggest that airline unions have performed well for their members. They have been able to bargain both higher wages and more favorable overall contracts than unions in most industries. There is no evidence to suggest that these unions would be at a relative disadvantage in bargaining for LPPs. On the contrary, the evidence suggests that airline unions could bargain for higher LPPs than exist in other sectors if they choose to do so.

III. COMPARISONS OF STANDARD LPP'S AND VOLUNTARILY NEGOTIATED LPP'S

The dominant feature of job security arrangements in the United States is that they are negotiated between management and unions rather than imposed by an outside party. Since there is a clear duty to bargain with established unions over these provisions, it is necessary to compare any imposed LPPs with those which have been freely bargained. This relative comparison is important. Imposed LPPs which carry only minimal standards would simply place a floor on freely negotiated standards in an industry. In contrast, imposed LPPs which carry relatively high standards may have two effects. First, workers who are the beneficiaries of these high LPPs are singled out for special treatment, since this treatment does not typically occur elsewhere. Second, these standards may represent a result which would have never occurred under collective bargaining even if the union was in an extremely strong bargaining position. The give and take in bargaining requires both parties to evaluate the relative merits of all aspects of the contract. The end product therefore represents the desires of the parties, their own implicit trade-offs, and their relative bargaining power based on economic and competitive conditions in the industry.

The three major areas of protection under the CAB standard LPPs are displacement allowances, dismissal allowances, and relocation allowances.[5] Displacement allowances protect the worker from decreases in pay resulting from reassignment to job classes, routes, etc., with lower levels of pay. In other sectors these allowances are referred to as "red circle rates." Dismissal allowances provide a payment to a worker who loses his job as a result of the merger. In other sectors these allowances take two forms: Severance pay and supplementary unemployment benefits (SUB). Relocation allowances reimburse workers for moving expenses which must be incurred as a result of an employer-required change.

In my testimony before the CAB, I presented comparisons of the standard LPPs with collectively-bargained LPPs in three areas. First, the incidence of these LPPs in major collective bargaining agreements in the United States (those agreements covering 1,000 or more workers excluding airlines and railroads) was presented. Second, the actual values of the standard LPPs were compared to values which existed in four major collective bargaining agreements. Finally, the incidence and values of LPPs in airline labor contracts was investigated.

The data were drawn from a sample of approximately 1,500 "key" labor contracts, each covering 1,000 employees or more, as gathered by the Bureau of Labor Statistics, U.S. Department of Labor (B.L.S.). The B.L.S. sample represents a high percentage of all private sector workers covered by collective bargaining in the United States, but excludes contracts in the rail and airline industries. The percentage of these contracts with a given provision is an overestimate of the percentage of all labor contracts containing these provisions, since contracts covering large units typically have better worker protection provisions. These data were gathered prior to the current wave of concessions by U.S. unions and prior to deregulation.

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[4] *See* Hendricks, Feuille and Szerszen, "Regulation, Deregulation and Collective Bargaining in Airlines," Industrial and Labor Relations Review, Vol. 34, No. 1, pp. 67-81 (October, 1980); Feuille, Hendricks and Kahn, "Wage and Non-Wage Outcomes in Collective Bargaining: Determinants and Tradeoffs" Journal of Labor Research, Vol. 2, pp. 39-53 (Spring, 1981). *See also,* Kochan and Block, "An Interindustry Analysis of Bargaining Outcomes, Preliminary Evidence From Two Digit Industries," Quarterly Journal of Economics, Vol. 91, No. 3 (August, 1977), pp. 431-52.

[5] Although provisions for arbitration of seniority problems is also included in the standard LPPs, specific rules are not imposed (i.e., how lists should be dovetailed, etc.) on the parties.

Incidence of LPPs

The incidence of red circle rates, severance pay, SUB and relocation allowances in major collective bargaining agreements is presented in Table 1. The actual incidence of these LPPs in negotiated contracts was remarkably low. Although these comparisons are illuminating, they provide only part of the story, because a single contract may contain only one or possibly all four of these provisions. In Table 2, I have computed the percentage of contracts which contain various subsets of these contract provisions. The most striking point in this table is that combinations of LPPs in negotiated contracts which are comparable to the standard CAB combination were very rare.

Scope of LPPs

The foregoing incidence data do not reflect the relative size or quality of the collectively-bargained LPPs. To investigate this topic I compared relocation, displacement, and dismissal provisions in four major contracts with the CAB standard LPPs. Two United Steelworkers contracts (ALCOA and U.S. Steel), one United Autoworkers contract (General Motors) and one Teamsters trucking contract (the National Master Freight Agreement) were chosen for analysis. The Steelworkers' contracts were generally agreed to contain the best set of job security provisions in the nation.[6] The Autoworkers' contract was widely cited for its SUB agreement. The Teamsters' contract was included to provide a comparison to a contract in another major transportation industry.

While contract language for these provisions is often quite complicated and resists a simple comparison, I have attempted to summarize the provisions in the CAB standard LPPs and in the four contracts in Table 3.

Displacement allowances exist in three of the four contracts (U.S. Steel, ALCOA and GM), but provide less extensive (both in workers covered and in percentage payment) coverage for a shorter time period than the standard LLPs. The displacement allowance ranges from 85 to 95 percent of the preceding year's actual earnings for that job class and is paid for only one year (unless the worker is displaced again to an even lower job class). This compares to the four year coverage at 100 percent in the CAB standard LPPs.

Relocation allowances exist in all four negotiated contracts. In each case these allowances are specifically limited by the contract. In the Steelworker and Autoworker contracts specific dollar limitations are imposed, depending on distance and marital status. In the Teamster contract moving expense are paid for specific items only, and only if the employee must move due to a change in operations; no moving allowance is granted if a operation is actually closed. In addition, none of these contracts has any mention of losses that the employee might incur due to selling a house or breaking a lease.

Dismissal allowances are much more complicated because they can reasonably be construed to include both a serverance pay and supplemental unemployment benefits (SUB). No dismissal allowance is given in the Teamster Contract. The ALCOA contract includes SUB but no severance pay, while the U.S. Steel and GM contracts include both.

The severance pay allowances in the GM and U.S. Steel contracts are perhaps most comparable to the standard lump sum payment option for the CAB dismissal allowance. At both GM and U.S. Steel, SUB which has been drawn is subtracted from any lump sum severance pay. The severance pay amounts in both of these contracts are modest compared to the CAB standards. (Measured in weeks as opposed to months.)

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[6] See KOCHAN, "Collective Bargaining and Industrial Relations: Form Theory to Practice" (Homewood, Ill. Richard D. Irwin, Inc., 1980) p. 357:

> Security against permanent job loss is one benefit that unions and employers have not been able to underwrite to any large degree through private collectively bargaining. The costs of comprehensive protection against permanent job loss are prohibitive for all but the largest employers with the greatest financial resources and planning capabilities. The steel industry contract of 1977 comes the closest to providing comprehensive protection against permanent job or income loss for workers with 20 or more years seniority. * * *
>
> The majority of unions have not been able to achieve protection against permanent job displacement through collective bargaining on these issues, not only because of employer resistance to their high costs, but also because union members have not been willing to assign these demands a high enough priority during the prosperous times in anticipation of the need for them when, and if, a crisis develops. * * *

SUB allowances are most closely related to the 60 percent monthly dismissal allowance provided by the CAB standard. In each contract studied the percentage covered is higher than the CAB standard (65 percent-plus for U.S. Steel; 70 percent-plus for ALCOA; and 95 percent or less for GM). However. these percentage include any state employment insurance or trade adjustment payments. The duration of payments in each case is much shorter than the CAB standard of five years. Steelworkers' contracts have a maximum duration for SUB allowances of two years (at twenty years of service) while the GM contract has a maximum of one year duration. Thus SUB provisions provide a good short term protection for the workers but do not compare to the CAB provisions for overall protection. In most cases, SUB provisions are also contingent on the financial position of the SUB fund. No such provision exists in the CAB standards since dismissal allowances are assumed to be fully funded.

Finally, the CAB standard LPPs also provide fringe benefit coverage during the applicable protective period. The ALCOA contract provides medical and life insurance for one or two years. The U.S. Steel contract also provides limited benefits for approximatly the same duration, but these benefits do not continue if the worker is terminated rather than laid-off from the job.

In summary, the CAB protective provisions appear to surpass the "best" provisions in the private sector by a significant margin.

LPPs in airline labor contracts

The airline industry is well known to have periodic downturns in economic prosperity and employment levels, with the resulting furlough of many employees. Given this pattern one might expect the airline labor unions to have negotiated labor protective provisions, such as job security and income maintenance provisions, in collective bargaining. Such does not seem to be the case, with the exception of the rather modest furlough pay discussed below.

Table 4 shows the incidence of labor protective provisions in 96 airline contracts for the 1975-1977 period (under regulation). Two conclusions emerge. First, severance pay and relocation allowances have been much more widely negotiated in airlines than in other industries (incidence in both cases is greater than 90 percent). Second, SUB and red circle rates are unusual in airlines. Virtually all of the airline labor contracts studied allow "bumping" on the basis of seniority, but with no compensation to the "losers" except furlough pay in the event that the worker loses his or her job.

Table 5 compares the CAB standard LPPs with the actual provisions for dismissal allowances (furlough pay), relocation allowances, and displacement allowances in 24 (1981) airline collective bargaining agreements, 10 for pilots, [7] and 14 for mechanics. [8] Since the contract provisions are quite similar within occupational groups, Table 5 presents a summary of these provisions rather than a listing of the provisions which exist in each contract.

Although I have not made a systematic comparison of levels of LPPs for other occupations in airlines, I have investigated their levels for Texas International and Continental employees. In all cases these levels are equal to or less than the levels for pilots and mechanics. Thus, I believe that comparisons with the CAB standard provisions for other airline occupations would yield similar results to those found with pilots and mechanics.

These airline contract comparisons suggest that in the absence of imposed LPPs, airline unions have provided job security provisions which are consistent with those that exist outside the industry and also consistent with the peculiar nature of the day-to-day operations in the airline industry. Combined with findings on wage levels and levels of other benefits, these results imply that airline unions have provided benefits which they deem important (moving expenses, furlough pay) while excluding other benefits (SUB, red circle rates) which have not been high priority items.

IV. LPPs, concession bargaining and deregulation

During the past year we have seen substantial concessions made by unions both inside and outside the airline industry. For example, the Bureau of National Affairs (BNA) reported that 33 concessions contracts were reached in April of 1982 alone. Of these 33 contracts, 80 percent called for wage reductions or wage freezes.[9]

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[7] Pilot contracts were reviewed for the following carriers: Pan American, Western, United, American, Eastern, Delta, Northwest, TWA, Continental and Texas International.

[8] Mechanic's contracts were reviewed for the following carriers: Western, Republic, Flying Tiger, TWA, Northwest, Continental, Braniff, American, United, Pan American, Eastern, Allegheny and Texas International.

[9] Bureau of National Affairs, "*Collective Bargaining Negotiation and Contracts,*" No. 966, June 10, 1982

In return for wage concessions, unions have often pushed for better protective provisions. Approximately 50 percent of the concession contracts analyzed by the BNA had improvements in these provisions.[10] For example, the new GM contract calls for increased payments to the SUB fund, reversal of plans to close four plants and increased length of health plan coverage for laid-off workers. Although the steel contracts have not yet been renegotiated, management proposals call for increased LPPs in exchange for freezing wages and capping COLA payments. SUB payments would be made for the life of the contract for workers with 10 or more years of service as compared to the current 20 year minimum years of service. The National Freight Agreement also calls for wage concessions. Concessions in exchange for security provisions have also been prominent in other industries such as rubber and meat packing.

Given the length of time since the CAB warning in the Pan American-National Merger, one might have expected the airline unions would have bargained for better LPPs. I have attempted to document significant settlements in airlines over the past year in Table 6. Although these data are not totally comprehensive, they do present a good picture of recent negotiations in the industry.

In some cases management has been able to win wage concessions (the industry pattern was to take a 10 percent wage cut in late 1981 and early 1982) as well as improved productivity through the easing of work rules. Since that time, the unions have seemed to do better and increases at many carriers have exceeded the nationwide all-industry average. In fact, the median cents per hour increase for airline contracts in the first six months of 1982 was higher than in any other industry. Yet, with few exceptions (the United-ALPA contract for one), there has been no significant change in LPPs in the industry. Is this because the unions have not had enough time to react to deregulation or because they don't have the economic clout?

As noted earlier, I believe that the data do not support the inadequate bargaining power argument. The timing argument seems equally unlikely. For example, the Communications Workers have already negotiated improved LPPs with AT&T in anticipation of deregulation. I believe that the simple explanation is that the airline unions expect Congress to impose some level of LPPs for the carriers. There is no reason for them to use their bargaining power for something that might come "free." Thus, bargaining power which might have been used to negotiate improved LPPs (although probably not to the level of the standard LPPs) will continue to be used to improve wages and other conditions until this issue is resolved.

Conclusion

Employment security provisions, whether explicit in a union bargaining agreement or implicit as in the case of Japanese firms, are an integral part of an industrial relations system. The system of free collective bargaining in the United States calls for these issues to be dealt with at the bargaining table. Government intervention in this system will undermine this bargaining relationship and should be done only in extraordinary situations.

The combination of all the evidence which I have presented suggests that imposing the standard CAB LPPs would provide job security provisions far in excess of even the more lucrative provisions in freely-negotiated contracts. Thus, equity arguments for the imposition of these LPPs are not supported by collective bargaining patterns in private industry in general or in the airline industry, in particular. Given the apparently strong union bargaining power in the airline industry, there do not seem to be special circumstances which warrant treating workers in merging airlines differently than workers in other industries or workers in non-merging airlines who suffer similar job security problems.

In addition, the 1978 Airline Deregulation Act clearly establishes a new national policy in favor of a deregulated domestic airlines industry, and the CAB's order in the Pan American-National merger indicated that LPPs will no longer be imposed automatically. It is inequitable to deregulate the airline product market yet to continue the regulation of the airline labor market. Instead, consistent deregulation policy would call for airline merger LPPs to be established in the same manner that other LPPs are established—freely negotiated by union and management at the collective bargaining table.

TABLE 1.—*Percentage of contracts in private sector with labor protective clauses (1978)*

Relocation allowance	13.0
Manufacturing	11

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[10] *Ibid.*

Transportation	44
Communication	62
Supplemental unemployment benefits	14.3
Manufacturing	25
Transportation	0
Communication	1
Severance pay	32.5
Manufacturing	41
Transportation	9
Communication	87
Red circle rates	6.0
Manufacturing	23
Transportation	7
Communication	7

Source: "Characteristics of Major Collective Bargaining Agreements, January 1, 1978," Bulletin 1065, Bureau of Labor Statistics, U.S. Dept. of Labor (April 1980), pp. 53, 96, 101.

TABLE 2.—*Percentage of all contracts with more than 1 lobor protective provision*

Red circle, relocation and severance	2.2
Relocation, SUB and severance	3.5
Red circle, relocation, severance and SUB	1.9
SUB and severance	7.5

Source: "Characteristics of Major Collective Bargaining Agreements, January 1, 1975," Tape, Bureau of Labor Statistics, U.S. Dept. of Labor; author's calculations.

TABLE 3

CAB standard LPP

United Steelworkers—U.S. Steel. Agreement dated: August 1, 1980. Effective through August 1, 1983.

Displacement allowance

100% for all employees. Maximum four years. Years service: 0-2—None; 2-20—85%; 20 plus—90% of preceding year's actual earnings.

Relocation allowance

All expenses including losses on home. Depends on distance moved and marital status.

Distance (miles)	Single	Married
0 to 50	None	None
50 to 99	$200	$600
100 to 299	250	650
300 to 499	300	750
500 to 999	350	950
1,000 to 1,999	450	1,200
2,000 plus	550	1,450

CAB standard LPP

United Steelworkers—Alcoa. Agreement Dated: May 10, 1980. Effective through May 11, 1983.

Displacement allowance

Years service (effective 1982): 0-2—None; 2-10—90%; 10 plus—95% of preceding year's actual earnings.

Relocation allowance

Same as U.S. Steel.

CAB standard LPP

United Auto Workers—General Motors. Agreement Dated: September 14, 1979. Effective October 1, 1979 through September 14, 1982.

Displacement allowance

Credit units (credits earned at rate of one-half unit per week of employment; credit units are lost when SUB is taken) in excess of 52 may be applied toward a guaranteed annual income at the following percentages: Years Service: 1-2—25%; 2-4—58%; 4-7—75%; 7 plus—100%.

Relocation allowance

Distance (miles)	Single	Married
0-50	None	None
50-99	$500	$1,125
100-299	560	1,240
300-499	605	1,300
500-999	705	1,505
1,000 plus	845	1,760

CAB standard LPP

Teamsters—National Master Freight Agreement. Agreement effective April 1979, through March 11, 1982.

Displacement allowance

None.

Relocation allowance

(1) Payment for required transfer to domicile more than 50 miles away due to change in expectations: Actual moving expenses; Damage in moving; Moving a mobile home; Lodging (30 days or less); 17¢/mile personal auto.

(2) No payment if terminal closed and transfer required.

TABLE 4.—*Percentage of contracts in airlines with labor protective clauses*

Relocation allowance	91.8
Supplemental unemployment benefits	0
Severance pay	93.8
Red circle rates	7.2

Source: Author's calculation from review of 96 airline collective bargaining agreements.

TABLE 5

CAB standard LPP	Pilots [1]	Mechanics and related occupations [2]
Displacement allowance:		
100 percent for all employees Maximum 4 years.	None	None.
Relocation allowance:		
All expenses including losses on home	Limited to 8,000-16,000 pounds for household effects. Limited traveling expenses for employee and family. Limited travel pay Limited settling expenses No converage on home losses or lease losses.	Limited to standard company regulations. Limited hotel, meal and automobile expenses. Settling expense and travel time depending on length of travel. No coverage on home losses or lease losses.
Dismissal allowance:		
(1) Lump sum option: Years of service—months pay: 1-2—3; 2-3—6; 3-5—9; 5 plus—12.	(1) Furlough pay at minimum guarantee or lowest pilot minimum: Years of service—months pay: 2—1; 3—1-1½; 5—2-2½; 10 plus—4-5.	(1) Furlough pay at normal wages for 40 hours: Years of Service—weeks pay: 1-2—1-3; 5-6—5-6; 10—9-11; 12 plus—9-16.

TABLE 5—Continued

CAB standard LPP	Pilots [1]	Mechanics and related occupations [2]
(2) 60 percent of average monthly compensation for duration depending on years service: Years of service—months: 1-2—6; 2-3—12; 3-5—18; 5-10—36; 10-15—48; 15 plus—60.		
(3) All benefits remain during applicable protective period.		

[1] Based on ALPA contracts with Pan American, Western United, American, Eastern, Delta, Northwest, TWA, Continental, and Texas International.

[2] Based on mechanic's contracts with IAM Teamsters, and TWU and Western, Republic Flying Tiger, TWA, Northwest Continental, Braniff, American, United, Pan Allegheny, and Texas International.

Note.—Entries show ranges found in actual contracts.

TABLE 6.—SIGNIFICANT CONTRACT SETTLEMENTS IN AIRLINES AS REPORTED BY U.S.B.L.S.

Date and firm	Union	Provisions
August 1981:		
Continental	Union of Flight Attendants (Ind.)	25 percent over 3 year agreement plus COLA, other fringe improvements.
Pan American	TWU, Teamsters, ALPA, FEIA	10 percent wage cut. Deferral of future increases until January 1983.
October 1981:		
United	Association of Flight Attendants	1-year contract extension. 10 percent wage increase. Increased per diem.
United	ALPA	24 percent over 3 years. Improved fringes, protection against layoffs and guarantees of use of United pilots for any subsidiary of UAL. Substantial productivity improvements.
November 1981: Republic	Association of Flight Attendants (ALPA).	6-month agreement dated November 1981. 10 percent pay cut.
December 1981: Republic	ALPA	Revised contract negotiated November 1980. 10 percent pay cut. Deferred Jan. 1, 1982 increase until June 1, 1982. Wage rates plus increase restored June 1, 1982.
January 1982:		
Western	ALPA	10-percent pay cut.
Western	Association of Flight Attendants (ALPA).	10-percent pay cut. Extended October 1980. October 1980 contract to December 31, 1982.
U.S. Air	Association of Flight Attendants (ALPA).	8.2-percent increase plus 3.5 percent on Aug. 1, 1982. 13-month agreement.
March 1982:		
United	IAM	18 percent over 24 months. Improved fringes. Change in work rules.
Pan American	Independent Union of Flight Attendants.	9 percent increases May 1981 to Oct. 31, 1981. 12 percent increases November 1981 to Feb. 28, 1982. 25 percent to 30 percent over March 1982 to March 1985. Higher increases for former National Employees. 10 percent wage reduction and deferral of increases until June 1983. Improved fringes.
April 1982: United	Association of Flight Attendants (ALPA).	10 percent for 1 year.
May 1982:		
Northwest	Railway and Airline Clerks	18.6 percent to 24.8 percent over 3 years. Improved fringes. Changes in work rules.

TABLE 6.—SIGNIFICANT CONTRACT SETTLEMENTS IN AIRLINES AS REPORTED BY U.S.B.L.S.—Continued

Date and firm	Union	Provisions
Republic	Association of Flight Attendants (ALPA).	Reflects side letters for 10 percent wage cut (expires July 1982) 11 percent increase over 21½-month contract. Improved fringes. $500 displacement pay if flight attendant elects not to move. Improved mileage allowance.
Northwest	IAM	23.6 percent over 38 months. Retroactive to November 1981. Improved fringes. Changes in work rules.
August 1982: U.S. Air	IAM	24.8 percent over 28 months. Improved fringes Changes in work rules.

Sources: U.S.B.L.S. Current Wage Developments, (various issues); Bureau of National Affairs, Daily Labor Report (various issues).

Senator **Kassebaum**. Thank you, Professor Hendricks.

Mr. Derchin, I would like to ask, in your analysis of the airline industry what do you see ahead, say 5 years? Are you willing to look into the crystal ball and make a prediction? Do you see greater employment and greater strength developing, or do you believe there still will be such an impact from the downturn that we have now that that is going to carry through for a period of time?

Mr. **Derchin**. The answer really lies more with Mr. Volcker, I think, than with anybody else. If the economy can move up again and we can get some strong traffic which we once had, a lot of the problems that we currently have today will be solved.

If we continue to see the type of recessionary environment that we have had for the last 3 years continue for the next 3 or 4 years or 5 years, there will be many bankruptcies. As a matter of fact, at this point in time if current conditions continue for just another 6 months, you will probably see a number of airlines not being able to stay in business. Lets use Pan Am as a hypothetical example, because I do not want to imply that I feel that they are a bankruptcy case. In this industry when you start talking about things like that you can make them happen.

But let us just say that they are a carrier having well known financial well known problems, and they have indicated recently that they have a plan to correct these problems. Part of the solution revolves around extricating themselves out of a large chunk of capacity, their L-1011 fleet which they feel that they can sell for about $500 million. That would get them over the hump for the next year or so, and if we get into an economic upturn at that point then they could survive and make a lot of money and everybody would be happy.

Now, in some way the problem here is, if LPP's were to be attached to these aircraft it is conceivable that potential buyers are going to do either one of two things: They are either going to say, we will give you a lot less than $500 million for these planes, or they are going to say, just forget it.

So, that is really my concern, that there are a number of carriers that could get themselves out of trouble right now, who may be hampered because of some of the inflexibilities here.

Regarding mergers, and acquisition, generally speaking, I believe there will be very few. The reason I do is because when this industry was deregulated one of the things it did is say that routes no longer have any value. There is no franchise system, so anybody can fly anywhere they want, within the United States anyway. And that was one of the major reasons for mergers in the past.

Now, the only reason you will merge in the future, really, is for either to get aircraft at a lower price than you could buying it used, or you need gate space or you need, in this current environment, slots, because of the PATCO problem. So, it just seems to me that the only mergers that I can actually envision in the short run, would be acquisitions by stronger airlines of some very weak ones in order to acquire equipment, acquire gates, acquire slots, at very reasonable prices.

Now, these stronger airlines may be inhibited from acquiring these weaker companies and really, in that case, bailing them out and preserving employment, because of these LPP's. When you talk to managements, even though they will not be specific with you in terms of what they are looking at, in general they are very concerned that they do not want to get involved in any type of acquisition of a company because of the labor situation.

They will bring that up as the number one inhibiting factor. They just do not want to have anything to do with it.

So, it is a cloudy crystal ball, because there is an awful lot of things going on.

Senator **Kassebaum**. I think, Professor Hendricks, you touched on this, so I would like to ask either one of you if you believe deregulation has caused greater hardships on the airline employees than are being suffered by any other labor group today—auto workers or steel workers—who have really been particularly caught in this slump?

Do you believe deregulation is what has done it?

Mr. **Hendricks**. Immediately after deregulation in 1978, the airlines were doing quite well and no one would have argued that deregulation caused great hardships on employees. Today, I think it is very, very difficult to disentangle cyclical changes in the industry from the shakeout which would naturally occur because of deregulation induced entry to the industry and because of relatively more efficient use of labor brought on by deregulation.

Certainly, most of the workers that are having problems in the airlines today are facing the same problems that are being faced by workers all over the economy. To that extent I think deregulation cannot be blamed for most of the problems that are occuring in the airlines today any more than regulation can be blamed for the problems that are going on in the auto industry. Automotive unions and management might argue this point, but I do not think that Government intervention is the problem.

Mr. **Derchin**. I think one of the things that we lose sight on are the positives that are going on as a result of deregulation, because they are really being masked by all of the external factors that are resulting in these huge losses. The airlines are really making some major strides in improving the efficiency of their operations.

Now, it may have a negative impact on quality of service, that was brought up this morning. But the net effect of what the airlines are doing is that they have gotten their costs down significantly over the past 3 or 4 years. They have really done a tremendously good job in controlling their costs and in rationalizing their route structures and moving away from unprofitable markets and into more profitable ones.

There are some companies that have demonstrated in the last 3 years that they can do things that show up on the bottom line. There are presently many profitable airlines, which is something again people do not recognize.

People Express was here. Piedmont Aviation was represented here. If you look at the top 10 most profitable airlines in the industry last year, they were all regional type airlines, carriers that have taken advantage of the Deregulation Act, and because of their low-cost structures, in combination with the ability to move into more lucrative markets, they have made a lot of money and they have added a lot of people to the payroll.

For example, People Express has 1,500 to 2,000 employees that would not be working if they had not existed. Midway is a new entrant, employing over 1,000 people. Piedmont has just told me they hired over 100 of the Braniff pilots recently, because they are expanding very rapidly. Southwest Airlines has hired, I am sure, well over 500 people within the last year or so.

So, there is an offset to a lot of the unemployment. There is a lot of employment coming in the industry, even in these very difficult times. That is why I always tend to be optimistic, which is difficult in this industry. But I feel that we really need some time, that when you go through a dramatic restructuring as we are going through, you cannot judge it on a 3-year period; you have to judge it on really a 10- to 20-year period.

Right now we, obviously, are seeing the losses of jobs and the losses in terms of earnings. In the next cycle, given the positives on the cost side, the airlines should make more money than they have ever made. Over a 20-year period, it is very conceivable, that the airlines will make a lot more money than they have ever made, and they will actually hire a lot more people than they ever would have hired under a regulated environment.

The financial community was one of the supporters of deregulation during the pre-deregulation debate, because we looked at the airline industry over the past 20 years prior to deregulation and it was one of the most unprofitable industries in the country. It met its rate of return criterion, which was a standard that the CAB put out, which was about 12½ percent, only once in 20 years.

This was a very unprofitable industry. That is why I mentioned earlier that only three carriers are really of investment grade quality today. This is a holdover from regulation. So, we always felt that, given free enterprise and given a reasonable economic cycle to deal with, that the industry should be a lot more profitable and the stockholders ultimately would benefit and we would all make a lot of money.

Senator KASSEBAUM. That is your 5-year forecast, is it, you hope?

Professor Hendricks, you have touched on the bargaining process, and that the industry and labor really had benefited, I think, what was the figure, 60 percent?

Mr. HENDRICKS. Sixty percent.

Senator KASSEBAUM. Sixty percent higher than in other negotiations. And yet, you probably heard Mr. Mahoney say that he believed that unless there was a codification of the Allegheny-Mohawk that uncertainty would prevail and unrest, and that is why they just did not wish to go to the collective bargaining table without in place the procedures under which they would operate.

You, obviously, do not feel this would be particularly necessary?

Mr. **Hendricks**. The strike is an integral part of our collective-bargaining process outside of the public sector. Strikes can be avoided by giving in to union demands or by government intervention.

However, academics studying the Railway Labor Act and the Taft-Hartley Act, have generally come to the conclusion that Government intervention to stop strikes has not typically been warranted. That is, strikes rarely constitute a sufficient threat to the Nation to require Government intervention in the bargaining process. Unions have taken this position all along, and I think that it is correct. However, they are now essentially taking the opposite position.

Senator **Kassebaum**. Well, in this instance, yes.

Mr. **Hendricks**. In this particular instance, the unions agree that strikes are a bad idea for everyone and that the Government should do everything possible to avoid strikes. They agree further that this can be accomplished by codifying these provisions.

It is not clear to me that codifying the provisions would prevent strikes in any event. If the unions are given particular provisions, it is not clear to me that they will not use their bargaining power, whatever it is, to bargain for other gains. If the firms will not agree to these other demands then the unions may still go out on strike. So, I am a little bit confused by that particular argument.

Senator **Kassebaum**. And yet, you stated from your studies that the union has the power to really bargain and be very effective in bargaining.

Mr. **Hendricks**. Well, certainly. We are not talking about textile workers here in terms of ability to demand and receive relatively high wages and fringe benefits. Compared to any industry in the United States, the airline workers have done very well and their unions have done very well in representing them. It is hard to argue that airlines unions are at a disadvantage vis-a-vis management if you compare them to essentially any union in the manufacturing sector.

For example, the communication workers have attempted to negotiate and have negotiated improved job security provisions in their contract with AT&T prior to deregulation. Today we have heard testimony citing LPP's in the proposed act to breakup ATT, yet these provisions are moot at this point of the antitrust settlement. The communication workers have had the foresight to attempt to improve job security provisions with AT&T right now, not later when the breakup actually occurs.

I believe that the airline unions would probably have negotiated improved provisions also, except for the fact that they were totally unsure what the CAB would do and what the Congress is now going to do in terms of actually giving them those provisions.

A similar situation occurred in the natural gas industry when there was uncertainty about deregulation of the price of new gas. Since gas found prior to deregulation might continue to be regulated, some companies may have been reluctant to find "new" gas when future discoveries would probably bring higher prices. Thus, they are not going to spend bargaining chips on providing job security provisions for their workers if they are unsure as to whether Congress is going to provide them at essentially a free cost.

Senator **KASSEBAUM**. The industry, you mean?

Mr. **HENDRICKS**. No; the unions.

Senator **KASSEBAUM**. Well, why would they not, though?

Mr. **HENDRICKS**. Because the unions can use those bargaining chips to get higher wages instead of labor protective provisions.

Senator **KASSEBAUM**. But the difference, it seems to me, between the airline industry right now and the communication industry, for example, is that the airline industry is a distressed industry, and I would think if there was that bargaining chip this would be a good time to use it.

Mr. **HENDRICKS**. There are a lot of industries which are incredibly distressed right now. When I picked up the paper this morning I noticed that John Morell settled with its workers for a total freeze on wages, and the union received improved job security provisions as a concession. Another example is the GM contract in which GM guaranteed that four plants would not be closed down in return for wage concessions by the union.

That kind of bargaining occurs all the time. It depends upon the value of particular provisions to the parties. It is my position—and I believe that the unions would agree—that the unions would never be willing to pay for the amount of job security provisions that exist in Allegheny-Mohawk. The provisions are just too expensive for a union to allocate enough bargaining power to get management to agree to provisions of this magnitude. That is why you do not observe such lucrative provisions outside the airline industry.

Senator **KASSEBAUM**. And that is, of course, why they would like to see them codified.

Mr. **HENDRICKS**. Of course.

Senator **KASSEBAUM**. Thank you very much. We appreciate your very interesting testimony today.

[Whereupon, at 2:05 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., September 30, 1982.

Hon. NANCY L. KASSEBAUM,
Chairman, Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MADAM CHAIRMAN: The purpose of this letter is to reaffirm information contained in the ATA statement before your Subcommittee on September 24, 1982 that a subsequent witness, J. J. O'Donnell, characterized as grossly distorted.

In the ATA statement, on page 8, it was correctly stated that "pilots in 1981 earned average annual compensation of $91,000 for 44.7 flying hours per month". Captain O'Donnell said that the figure should be $68,926.

As widely recognized, compensation includes salary as well as the value of related benefits such as pensions and insurance. According to data required to be filed by U.S. scheduled airlines with the Civil Aeronautics Board in CAB Form 41, the average compensation per pilot in 1981 was $91,000, as indicated in the ATA statement, including an average salary of $69,300 and an average for related benefits of $21,700.

In a similar vein, Captain O'Donnell, again confusing salary with compensation, attacked data in the ATA statement with respect to the most senior pilots. The ATA statement said on page 8 that B-747 senior captains earned more than $150,000 per year. Captain O'Donnell, in his comments before your Committee, said that average B-747 captain's pay was $118,560.

According to CAB Form 41 data, the cost of related benefits for B-747 cockpit crews in 1981 averaged 29.84 percent of salary. Using $118,560 as the salary base, the average value of the related benefits would be $35,378 (29.84 percent x $118,560). Thus, average total compensation would be $153,938, reaffirming the ATA statement that senior B-747 captains earn more than $150,000 per year.

I would have thought that Captain O'Donnell would not want to minimize the remarkable achievements in total compensation levels, including salary and related benefits, gained through negotiations with the airlines. For unaccountable reasons, he instead characterizes the results as "distortions" and "inaccuracies".

In summary, the information with regard to compensation of pilots is correctly stated in the ATA testimony.

Sincerely,

WILLIAM J. BURHOP,
Vice President, Federal Affairs.

AIR LINE PILOTS ASSOCIATION,
Washington, D.C., October 5, 1982.

Hon. NANCY KASSEBAUM,
U.S. Senate, Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR MADAM CHAIRMAN: During your Aviation Subcommittee hearing September 24 on the subject of labor protective provisions in airline mergers and acquisitions, a controversy arose over the matter of compensation of airline pilots. In his prepared testimony, Paul Ignatius, President of the Air Transport Association stated on pages 7 and 8, "Airline labor needs no such bargaining advantage, as shown in Attachments A through C to this statement. * * * Attachment C focuses upon pilot compensation, indicating that pilots in 1981 earned average annual compensation of $91,000 for 44.7 flying hours per month. The most senior pilots, of course, earned substantially more than this, with B-747 senior captains earning more than $150,000 per year."

At the conclusion of my appearance before the Subcommittee, I took exception to the ATA statement quoted above. In order for the record to be accurate on this issue, I offer the following information on pilot earnings in 1981. Based on the information from individual W-2 forms of 30,972 active ALPA members from which we derive dues assessments, the average earnings for 1981 were $68,926. The term "compensation" used in the ATA statement, commonly refers to both wages and other benefits such as pension and insurance payments. This distinction between "compensation" and "earnings" is not widely perceived outside the airline community. Therefore, without some clarification, the impression is left that average pilot earnings (wages only) for 1981 was $91,000, and that B-747 senior captains "earn" more than $150,000 per year. This clearly is not the case. I believe it would have been appropriate for the ATA to give a more complete picture of what is included in the category of "compensation" so that the Subcommittee, the Senate, and the general public would be more accurately informed of the facts on this particular issue in the debate.

If the Subcommittee desires additional information on this matter, I would be pleased to provide it.

Sincerely,

J. J. O'DONNELL,
President.

NATIONAL ASSOCIATION OF MANUFACTURERS,
October 12, 1982.

Re labor protection provisions for the airline industry.

Hon. NANCY L. KASSEBAUM,
Chairman, Subcommittee on Aviation, Committee on Commerce, Science, and Transportation U.S. Senate, Washington, D.C.

DEAR MADAM CHAIRMAN: The Subcommittee recently concluded hearings on whether Congress should mandate certain labor protection provisions (LPPs) in connection with various airline transactions such as mergers, acquisitions and route transfers. The National Association of Manufacturers is strongly opposed to the mandatory imposition of LPPs and offers the following comments for the Subcommittee's consideration during deliberations on this matter.

The National Association of Manufacturers is a voluntary business organization of more than 11,500 members and, through our National Industrial Council and the Associations Department, is affiliated with an additional 158,000 businesses. The NAM is the major trade association representing the manufacturing community and our members produce nearly 80 percent of the nation's manufacturing output and employ 85 percent of the industrial workforce. As such, we have a vital interest in legislative initiatives relative to labor management relations. Although few of our members would be directly impacted by LPPs, we are extremely concerned regarding the precedent that would be established by the imposition of such mandatory provisions and the impact on collective bargaining in general.

Prior to passage of the Airline Deregulation Act of 1978, the airlines operated in a highly regulated environment very similar to that of public utilities. Virtually every aspect of the airline industry's operations were governed by extensive federal regulation. In the pre-deregulation era, the Civil Aeronautics Board had the descretionary authority to impose LPPs in cases involving major transactions such as mergers and acquisitions. Examination of the CAB's exercise of this discretionary authority prior to deregulation makes it abundantly clear that decisions were made on a case-by-case basis and that LPPs were imposed only to protect the public interest in maintaining the integrity of the air transportation system as a whole. It is equally clear that the CAB's decisions were not directed at guaranteeing airline employees' welfare.

Enactment of the Airline Deregulation Act of 1978 ushered in a totally new and dynamic era for the airline industry and its employees—one that is unencumbered by excessive government regulation. Deregulation has provided the airline industry and its employees greatly expanded opportunities to compete, as do their counterparts in every other business enterprise, in the open market. For example, entry into new markets is achieved easily now. Likewise, however, just as their private sector counterparts have the opportunity to enjoy the fruits of success, both the airline industry and its employees are now subject to the economic risks attendant to open-market competition as well.

Proponents of LPPs would have the government not interfere in good times but intervene when times are not so good. It appears that the collective bargaining efforts of airline employees have been effective in achieving relatively high wage and benefits levels. As we are all aware, today's economic conditions have had a significant impact on all sectors of the economy. Yet, airline employees feel they deserve special rights not enjoyed by any other group. Rather than achieve their objectives through the collective bargaining process, as do others, these employees are seeking unwarranted Congressional protections without any apparent regard for the economic condition of the airline industry.

As noted above, few NAM members would be directly affected by LPPs. We are nevertheless extremely concerned about the precedent and potential impact such statutory mandates would have on member company labor-management relations and on collective bargaining in general. It would be an extraordinary federal intervention into the collective bargaining process that is without parallel in any other industry. The imposition of LPPs would, we believe, inflict irreparable damage to the delicate process by which management and labor arrive at agreements on wages, working conditions, and job security. The remedies provided would be extremely costly—dismissed pilots, for example, could receive from $24,000 to $90,000 per year for up to five years. These costs would be borne by the airlines and, ultimately, the consumer. Finally, imposition of the provisions would exacerbate the already severe economic problems currently facing the airline industry by superimposing new and costly requirements.

Airline deregulation was predicated on permitting the industry and its employees to function, as do others in the private sector, on the basis of the "market" and other forces, including collective bargaining. The mandatory imposition of LPPs would subvert that process.

Therefore, the NAM believes it would be ill-conceived and unwise to mandate such provisions as a matter of law. We respectfully urge that the Subcommittee not yield to attempts to enact LPP-related legislation.

We appreciate your consideration on this matter.

Sincerely yours,

F. M. Lunnie, Jr.,
Assistant Vice President, Industrial Relations.

Civil Aeronautics Board,
Washington, D.C., October 22, 1982.

Hon. Nancy L. Kassebaum,
U.S. Senate,
Washington, D.C.

Dear Senator Kassebaum: I would like to supplement my comments in response to questions that were asked of me during the hearings on Labor Protective Provisions.

First a question from Senator Cannon contained the statement that LPP payments have only been made in one case. I am not certain about the source of this information.

The Airline Pilots Association (ALPA), in its testimony, claims that the Pan American-TWA route swap was the only transaction resulting in substantial payments. ALPA further claims that evidence in the *Texas International-Continental* case demonstrates the cost of LPP's has not been significant. I presume that this is what Senator Cannon was referring to.

Let me set the record straight.

In the *Texas International-Continental* case, the Board asked parties to develop a record on the costs and benefits of LPP's Carriers that had recently merged were asked to supply information. The typical response from these carriers was that they had conducted no study and maintained no segregated financial records relating to LPP costs.

The Board decided not to order these carriers to develop specific information. Under section 408, the Board must reach a decision within 6 months. It was unreasonable to expect carriers to review all the potentially relevant financial data to produce usable cost information in the short time before the hearing had to begin.

We also were sensitive to arguments about the time and money carriers would have to spend to give us LPP cost data.

Republic Airlines provided more information about its acquisitions of Southern Airlines and Hughes Air West than the other carriers. Republic estimated that moving and relocation expenses alone totaled $4.3 million. This is double the amounts paid in the TWA-Pan Am route swap, which ALPA cites as the only substantial LPP payment in history.

At that time, Republic had incurred no displacement allowance expense. However, in February 1982, Republic furloughed employees and dismissals could follow. These employees might now contend that they are entitled to LPP coverage.

This illustrates another problem. Claims under the LPP's may not be filed for some time after a merger. It takes even longer to get an arbitration award on disputed claims. There are still unresolved claims from the Pan Am-TWA route swap which the Board approved 10 years ago.

So I do not think it is fair to say that LPP payments have only occurred in one case, or have not been substantial.

Carriers have only told us that they cannot easily break out LPP costs, not that they incurred no costs. Also, it will take quite a number of years for arbitration awards before the total tab for LPP's in the recent merger cases will be known.

If the LPP's really imposed no financial burden on carriers, as Senator Cannon's question suggests, I have a hard time understanding why so many carriers oppose them.

This leads to my second comment on Senator Cannon's question whether it makes any difference if LPP's are codified because air carriers so far have always agreed to them.

Management concession on the LPP issue is influenced by the regulatory approval process under section 408. Carriers accept LPP's rather than prolong the hearings or generate intense labor opposition.

But the Board does not think that section 408 should be maintained. Last year, we recommended abolishing section 498 in early sunset legislation. Without section 408, the regulatory influence on management's decision to agree to LPP's will be removed.

Carriers may still agree to LPP coverage on their own. But past history under section 408 cannot be cited as a reason for imposing LPP's by statute. What airlines—and their employees—might agree to do may be entirely different absent the section 408 preapproval requirement.

There are other problems with codification of LPP's, either as an addition to section 408 or separately.

As I indicated in my testimony, LPP's have been imposed as a matter of the Board's discretion and only after their likely impact in a particular situation has been evaluated.

LPP's present a problem if there is no decisionmaker with expertise in evaluating the impact of a transaction on the air transportation system. Administrative discretion and flexibility are needed because it is difficult to define the types of transactions that should be subject to LPP's.

As the attempt to codify LPP's in the War Risk Insurance Act illustrates, legislation can be overbroad in terms of past Board practice and too inflexible to avoid sometimes perverse results.

A vague standard would be even more difficult for courts to interpret.

So, as a practical matter, some administrative agency would have to continue regulatory involvement over carrier transactions for the purpose of considering LPP's. This result would be fundamentally at odds with the direction of deregulation.

Sincerely,

DAN MCKINNON,
Chairman.

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